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Reports of law cases affecting friendly

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REPORTS

OF

LAW CASES

AFFECTING

FRIENDLY SOCIETIES,

CONTAINING MOST

IMPORTANT DECISIONS,

WITH

COPIOUS INDEX OF PRACTICAL POINTS, TABLE OF CASES,
ABBREVIATIONS AND EXPLANATIONS,
REFERENCES TO ACTS OF PARLIAMENT TOGETHER WITH
FRIENDLY SOCIETIES ACT, 1896 (59 & 60 VIC., CAP. 25),
EXTRACT (AFFECTING FRIENDLY SOCIETIES) FROM
POOR LAW AMENDMENT ACT, 1876 AND
THE POOR LAW AMENDMENT ACT, 1879,
ALSO
THE PROVIDENT NOMINATIONS AND SMALL INTESTACIES ACT, 1883.

COMPILED BY

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ASSISTED BY

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PREFACE.

The Grand Master and Board of Directors having entrusted me with the duty of revising the last publication of Law Cases compiled by P.G.M. Louis E. Wollstein, (which has long since been out of print), I deemed it necessary to obtain the assistance of P.P.G.M. Joseph Gammon, a clerk in the Chambers of The Hon. Mr. Justice Kekewich, at the Royal Courts of Justice. Bro. Gammon's knowledge of and experience in connection with the subject especially qualified him for the work, and he at once agreed to undertake in conjunction with myself the preparation of the volume.

JOHN DIPROSE.

Since the previous publication many cases have formed the subject of judicial decisions in which well established principles have been applied under novel and complex conditions.

At the Board Meeting, held in August last, we submitted for the approval of the Directors, a large number of short head-notes of cases for their perusal and approval, with the result that we were instructed to reproduce the reports, condensing the same wherever it was found practicable. Numerous disputes have been adjudicated upon by the various Courts of Law since that time, and we now place before the Unity 262 cases (or nearly 3 times the number previously published), many of which are of vital importance to Friendly Societies generally and the Manchester Unity in particular.

The production of this compilation has necessitated research through hundreds of volumes of legal publications, and in its arrangement we have endeavoured to collect the cases under comprehensive titles.

By this means nearly all the cases bearing on any particular subject will be found (where possible so to arrange them) close to one another, and the cases themselves are distinguished by head notes so that lay members as well as the legal practitioner may readily find the point for which he happens to be in search.

It has been found necessary to reprint several old cases and to add others—which perhaps might be thought obsolete,—as they are of importance for collateral purposes upon the ground that new principles are often best explained by reference to the old decisions.

Considerable care has been taken in the selection of the cases, and neither time nor labour has been spared to make the compilation complete and accurate, and special attention has been devoted to the Index with the desire of making it thoroughly comprehensive.

A Table of Cases, giving a reference to the source from which each particular report was obtained, will be found at the commencement of the Book, and the abbreviations are explained on the preceding pages.

It has been found impossible to give the dates of many of the old cases, as they were not inserted in the volume from which they have been re-printed.

Where any case is affected by a particular statute a foot-note will be found giving a reference to the Act or Acts governing the case quoted.

For convenience of reference the Friendly Societies Act, 1896 (59 & 60 Vic., cap. 25); Poor Law Amendment Acts, 1876 and 1879 (so far as they affect Friendly Societies); and the Provident Nominations and Small Intestacies Act, 1883, will be found at the end of the book.

We desire to tender our grateful acknowledgments to Mr. Baden Fuller whose excellent treatise on the law of Friendly Societies has done much to reduce the labour of research, heavy as it has been.

We also desire to acknowledge the kindness and courtesy of Mr. R. Riches, the librarian of the Inns of Court Bar Library, Royal Courts of Justice, who has done much to aid our efforts, and to express our great indebtedness to Mr. Arthur Smith, Assistant Superintendent, Royal Courts of Justice, for valuable help rendered.

Having completed to the best of our ability the responsible duty entrusted to us, a labour which has been lightened by the

hope we entertain that these pages will prove instructive as well as useful to our fellow members, we trust that by their perusal much friction and unnecessary expense in litigation may be avoided.

If this, our earnest desire, be achieved, we feel we shall have done something to promote the best interests of our members and the society to which we have the honour to belong.

JOHN DIPROSE, P.G.M.
JOSEPH GAMMON, P.P.G.M.

May, 1897.

A LIST

OF THE

ABBREVIATIONS AND REFERENCES

ADOPTED IN THIS VOLUME.

Abbreviations.	*Names of Reporters and Reports.*
A. & E.	Adolphus and Ellis' Reports.
B. & C.	Barnewall and Cresswell's Reports.
Beav.	Beavan's Reports.
B. & S.	Best and Smith's Reports.
Bing.	Bingham's Reports.
Bucks Bank Cases..	Bucks Cases in Bankruptcy.
Camp.	Campbell's Reports.
C. B.	Common Bench Reports.
C. B., N. S... ..	Common Bench Reports, New Series.
Court of Sess. Ca...	Court of Sessions Cases.
Cox C. C.	Cox's Criminal Cases.
Dea.	Deacon's Reports.
D. G. & S.	De Gex and Smale's Reports.
D. M. & G... ..	De Gex, Macnaghten and Gordon's Reports.
D. & L.	Dowling and Lowndes' Reports.
Den. C. C.	Denison's Crown Cases.
E. & B.	Ellis and Blackburn's Reports.
E. & E.	Ellis and Ellis' Reports.
Ex.	Exchequer Reports.
Irish R.	Irish (Chancery Division) Reports.
Irish R. Eq. ..	Irish Reports (Equity).
J.P.	Justice of the Peace.
Jur. N. S.	Jurist, New Series.
K. & J.	Kay and Johnson's Reports.

L. J. (Notes of Cases)	Law Journal (Notes of Cases).
L. J. (Ch.)	Law Journal, Chancery.
L. J. (Ex.)	Law Journal, Exchequer.
L. J. (M. C.) ..	Law Journal, Magistrates' Cases.
L. J. (Q. B.) ..	Law Journal, Queen's Bench.
L. R. Ch. App. ..	Law Reports, Chancery Appeal Cases.
L. R. Ch. D. ..	Law Reports, Chancery Division.
L. R. C. P... ..	Law Reports, Common Pleas Cases.
L. R. C. C. R. ..	Law Reports, Crown Cases, Reserved.
L. R. Eq.	Law Reports, Equity Cases.
L. R. Q. B... ..	Law Reports, Queen's Bench Cases.
L. R. Q. B. D. ..	Law Reports, Queen's Bench Division.
L. T. (Journal) ..	Law Times (Journal).
L. T. N. S... ..	Law Times, New Series.
*M. U. Rep. ..	Reports of Law Cases published by the Manchester Unity, Independent Order of Oddfellows in 1892.
M. & G.	Manning and Granger's Reports.
M. & W.	Meeson and Welsby's Reports.
M. D. & D... ..	Montague, Deacon and De Gex's Reports.
Moo. Rep.	Moore's Reports.
Q. B.	Queen's Bench Reports.
Rep...	The Reports (Mews.)
Rep. A. O. F. ..	Report of the Ancient Order of Foresters.
R. C. R.	Report of Chief Registrar of Friendly Societies.
Ry. & M.	Ryan and Moody's Reports.
S. J...	Solicitor's Journal.
T. L. R.	Times Law Reports.
Ves...	Vesey's (Junior) Reports.
W. N.	Weekly Notes.
W. R.	The Weekly Reporter.

* These cases are all reprints from the last Edition, and it has, therefore, not been thought necessary to insert the pages.

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REPORTS OF LAW CASES

AFFECTING

FRIENDLY SOCIETIES.

SHROPSHIRE QUARTER SESSIONS, 1891, *June* 30. *Before* SIR O. WAKEMAN, BART., (*Chairman*).

CASE 1.

REGINA *v.* BENBOW.

Friendly Society—Secretary—Falsification of Accounts—Embezzlement—Conviction.

William Benbow (38), pumpmaker, was indicted for having at Astley Abbots, while being secretary to Court Pride of the Village, Ancient Order of Foresters, made various false entries and embezzled various sums, which were set out in 14 different counts.

Mr. Spearman and Mr. Rowlands for the prosecution, and Mr. Daniells and Mr. Rolette represented prisoner.

The contention of the prosecution was simply that prisoner had falsified the accounts and appropriated money that should have gone to the funds of the Foresters' court.

William Edwards (treasurer to the lodge) was the first witness, and spoke to having seen prisoner make entries in certain books and to discrepancies having been discovered. In cross-examination, witness said that some of the discrepancies were pointed out, but prisoner was not asked to pay the money back, so as to have the matter settled by the court. Proceedings were instituted instead, although one of the rules was that if any officer misapplied the funds he should be asked to refund them and then be excluded from the court.

Further evidence having been called, prisoner withdrew his plea of not guilty, and pleaded guilty to falsification of accounts and also to two of the counts of embezzlement. The other counts were withdrawn.

Mr. Daniells addressed the court, urging points in extenuation of the offence, and suggesting that in accordance with the rules prisoner ought in fairness to have been allowed to refund the money, although it was optional for the society to prosecute.

The chairman characterised the offence as a very serious one, and said the consequences of such conduct as prisoner's had been to deprive working men of their hard-earned savings. The court felt they would not be doing their duty unless they passed a severe sentence. Prisoner would be sent for hard labour for eight months.

CASE 2.

COURT OF APPEAL.

HOLGATE *v.* SHUTT.

1884. *June* 18.

Practice—Account—Settled Account—Order for Account not directing that Settled Account shall not be disturbed.

By the rules of a benefit society it was provided that the accounts should be audited, and that after they had been audited and signed by the auditors the secretary and treasurer should not be answerable for any mistakes, omissions, or errors that might afterwards be proved in them. An action for an account was commenced by two shareholders on behalf of themselves and all other shareholders, against the secretary. No pleadings were delivered, and on a motion for a receiver being made the defendant submitted to an order for an account of all moneys and property of the society come to his hands, without any direction as to settled accounts. The defendant carried in a complete account, and the plaintiffs carried in a surcharge. The defendant then set up certain accounts which had been audited under the rules as vouching his account for the period over which they extended. The point was brought before the judge, who was stated to have expressed his opinion that the audited accounts must be treated as conclusive. The plaintiffs then applied for a direction that in taking the accounts the audited accounts might be disregarded, on the ground that as the order did not save the settled accounts, they could not be attended to. The application was refused, and the plaintiffs appealed :—

Held that the audited accounts ought not to be disregarded, and that the appeal must be dismissed ; but the dismissal was prefaced by a statement of the opinion of the court that the plaintiffs, in taking the accounts under the order, were at liberty to impeach the audited accounts for fraud.

CASE 3.

COURT OF APPEAL.

HOLGATE *v.* SHUTT.

1884. *Nov.* 14.

Account—Order for Accounts not referring to Settled Accounts.

Under an order directing an account, and not referring to settled accounts, the accounting party may set up settled accounts, though the order does not direct that settled accounts shall not be disturbed, and the opposite party may impeach them, though the order does not expressly give him liberty to do so.

By the rules of a benefit society it was provided that the accounts should be audited, and that, after they had been audited and signed by the auditors, the secretary and treasurer should not be answerable for any mistakes, omissions, or errors that might afterwards be proved in them. By Statute 10 Geo. IV., c. 56, s. 33, it was directed that the accounts of a society of this description should be audited by two or more members of the society. In December, 1883, an order was made for an account of all moneys received by S., the late secretary. S. carried in audited accounts down to October, 1880, and claimed to have them treated as conclusive, while the plaintiffs claimed to have them disregarded. The Court of Appeal decided (1) that accounts audited and signed according to the rules were *primâ facie* evidence in favour of S., but that the plaintiffs, in taking the accounts directed by the order, might impeach such audited accounts for fraud. On examination of the audited accounts, it appeared that they had throughout been audited and signed by one person only, who was not a member of the society. Bacon, V.C., made an order expressing his opinion that the accounts had been audited in accordance with the rules, and directing the account under the order of December, 1883, to commence from October, 1880, the date of the last audit :—

Held, on appeal, that the accounts had not been duly audited in accordance with the statute and the rules, and that the order of the Vice-Chancellor must be discharged, but without prejudice to the right of the defendant to show that the accounts in question were to be treated as settled accounts on any other ground than that they were audited in accordance with the statute and the rules.

CASE 4.

MASTER OF THE ROLLS. 1878

MOORS *v.* MARRIOTT.

[1876 M. 181.]

Jan. 22. *Building Society—Default of Secretary—Claim against Estate—Priority over other Creditors*—4 & 5 *Wm. IV., cap.* 40, *sec.* 12.

Where the secretary of a Benefit Building Society established and certified under 6 & 7 Wm. IV., c. 32, and whose rules provided that the secretary's accounts should be regularly presented and audited, had misappropriated the moneys of the society that came into his hands, and died leaving his estate insolvent: —*Held*, that under section 12 of 4 & 5 Wm. IV., c. 40, the building society was entitled to be paid out of the estate the amount of the defalcations in priority to other creditors, and that the want of due diligence on the part of the society in examining the accounts was no bar to the claim.

In this case, in which an order had been made for the administration of the estate of George Marriott, deceased, the question which came before the court on further consideration was whether certain building societies were entitled to be paid their claim on the estate in priority to other creditors. George Marriott was for some time before and at the

time of his death secretary and manager of the Portland Mutual Permanent Benefit Building Society (No. 1) and the Portland Mutual Permanent Benefit Building Society (No. 2). These societies were established and duly certified under 6 & 7 Wm. IV., c. 32, for the usual and authorised purposes. By the rules of each of these societies it was provided that the society should meet once at least in every month to transact the general business, when the bank book should be exhibited by the secretary, and the amount deposited with the treasurer since the last meeting reported by the chairman; that the treasurer should receive the money at each subscription meeting, and on the following day should satisfy the secretary that the same had been paid to the account of the society at the bankers, and should deliver the pass-book containing an acknowledgment of such money to the secretary, which he should produce at the next meeting of the directors; that three directors should be appointed for the purpose of auditing the accounts of the current year of the society, and the annual accounts should be regularly audited, printed, and published under the superintendence of the directors. By another rule defining the duties of the secretary, the said George Marriott was appointed secretary and manager of the society, and he was directed to produce at each monthly meeting the banker's pass-book for the inspection of the members of the society.

It appeared that Marriott had, on his appointment as secretary and manager of the said societies, given a bond as one of the rules required; he was intrusted with the receipt of moneys and the keeping of the accounts of the said societies, and thus received and had in his hands from time to time divers sums of money paid to him by members in respect of their subscriptions, amounting in the whole to £341 10s. 9d. for the first named society, and £10 0s. 3d. for the second named society. These sums he had not accounted for, but spent them for his own purposes. On the 2nd January, 1876, Marriott died, having made his will and appointed the defendant his executrix; and on taking the accounts the chief clerk certified that the said sums were due to the said societies respectively, and that the estate was insufficient to pay his debts in full.

At the time of the testator's death neither of the societies had obtained Certificates of Incorporation under 37 & 38 Vic. c. 42. The two societies now claimed payment of the sums so found due to them in priority to the other creditors. They had presented their demand in writing under section 12 of the Act 4 & 5 Wm. IV., c. 40, for amending the laws relating to Friendly Societies.

Mr. Chitty, Q.C., and Mr. Carey for the plaintiffs who were creditors of the testator.

Mr. Bagshawe, Q.C., and Mr. Bond Coxe for the Building Societies.

Jessell, M. R. :—The question is whether these societies are entitled to the benefits of section 12 of the Statute 4 & 5 Wm. IV., c. 40 or not.

Mr. Marriott was the secretary and manager of the societies, he kept their accounts and received their money. It is quite true that when he died he had no money of the societies in his hands, because he had spent it all, but his estate which is to be administered is of some value.

The section is as follows. [His lordship then read the section.] Under this section the testator's estate must discharge the claim of the

societies before his other debts. But it is said that if the societies had shown due diligence, and had asked to see the accounts, they would have discovered the defalcations. No doubt; but in my opinion it is the very object of the statute to meet such a case as this. Committees of such societies, as a rule, do not look after their managers properly; they are generally composed of poor people, and the object of the legislature was that if a society's trustees and officers turned out dishonest, the society should have the right of enforcing its claim against them in priority to all others. But it has been argued that the want of due diligence should now preclude the societies from enforcing their claim.

Now this is a legal demand and can be destroyed by a legal objection like the statute of limitations, but there is no equity in any other creditor to get rid of it. The non-enforcement of a legal claim barred at the end of twenty years for nineteen years and 364 days does not entitle any one to object to its enforcement on the last day, nor is a creditor who has stood by for five years and three-quarters prevented from calling his debtor to account in the last quarter of the year. There is no legal obligation on the part of a creditor to call upon his debtor to pay.

This is no question now between the societies and other creditors, but between them and their late manager's personal representative. The exact point was decided in a case which I have mentioned of Engleheart *v.* Ordell, which, as far as I know, is not reported. In that case a well-known solicitor of Lincoln's Inn, enjoying a very good reputation, was appointed receiver in a cause. The solicitors of the plaintiff and defendants, also solicitors in Lincoln's Inn, were well acquainted with him, and, instead of calling upon him to pass his accounts in the regular manner, allowed him to send in a general account of his dealings as receiver. After his death it was discovered that he had falsified his accounts; he died insolvent, and it was found that a very small sum would be available for his other creditors if the claim against him as receiver were paid in full. The persons entitled in the suit under the decree presented a petition to enforce his recognisances.

The petition was dismissed by Vice-Chancellor Stuart, but his decision was reversed by the Lords Justices on the ground that it was no answer to the legal demand under the recognisances, that the solicitors had not shown proper care in requiring the usual accounts, and that the legal demand was not affected by the want of due diligence. The simple contract creditors could not be heard to say that they had any right to object to the enforcement of a legal demand. I should be bound by that case even if I did not agree with it, which I do.

The claim of the societies must, therefore, be paid in priority to the other creditors.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic. cap.* 25, *sec.* 35.

CASE 5.

COURT OF QUEEN'S BENCH. 1838. *June* 2.

THE QUEEN AGAINST LORD GODOLPHIN AND ANOTHER, JUSTICES OF CAMBRIDGE.

Friendly Society—New Rules by inadvertence not confirmed although acted upon for 30 years—Invalid.

A friendly society enrolled its rules in 1794 under Statute 33 Geo. III., c. 54. In 1804 alterations were made in them, but by a neglect for which the society was not to blame, the altered rules were never enrolled. They were, however, acted upon, and the original ones disused till 1835, when the omission to enrol was for the first time discovered.

On motion for a mandamus to justices to hear the complaint of a member who had been expelled in 1836.

Held that the rules as altered could not legally be acted upon. That it was at least doubtful whether the original rules continued in force, and, consequently, that the court could not issue a mandamus to the justices, but must leave the applicant to his remedy in equity.

In Hilary Term, 1837, a *rule nisi* was obtained for a mandamus to Francis Lord Godolphin and John Hailstone, clerk, two of the justices in and for the county of Cambridge, acting within the division of Cambridge, commanding them to issue their summons to the president and stewards of a certain friendly society, established in the town of Cambridge, called the Old Club, and to hear and determine the complaint of Thomas Lupson against the said society, and the officers thereof for having expelled him from the said society, and to make such order therein as to them should seem just. The affidavits used on application for the rule stated the following facts.

The society was established in 1755. Its rules were enrolled with the Clerk of the Peace for the county in 1794, and remained so enrolled and unaltered. Those rules were acted upon till 1804, when they were altered and reprinted. The society directed one Driver, an attorney's clerk, to get the amended rules enrolled. Lupson paid him money for that purpose, and Lupson and the rest of the members understood and believed that it had been done. Under that impression the amended rules were acted upon till 1835; and since 1804 various applications have been made to magistrates by persons expelled for re-admission, all of which have been adjudicated upon. In 1835 it was discovered, and the society informed, that the amended rules had never been enrolled; but no step had hitherto been taken for enrolling them. In September, 1836, Lupson was expelled the society for alleged misconduct. He thereupon laid an information before the magistrates of the division of Cambridge, who issued a summons to Massey (the president) and Briggs (one of the stewards) to answer the information. On the hearing, November 12, 1836, before the magistrates named in the present rule, and two others, Massey and Briggs contended that the magistrates had no jurisdiction, because the rules, as amended in 1804, had, in effect, and in point of law, annulled the rules of 1794. The magistrates thought that, under these circumstances, they had not

jurisdiction, and therefore they refused to adjudicate. The affidavits stated that Massey himself, in 1830, after being expelled the society, had obtained re-admission by an order of justices; and that, in December, 1836, he (being the president) and two other persons (the stewards) had drawn £75 out of the society's funds, stating to the treasurer at the time (in answer to a question from him) that they applied as officers of the society, and under its rules as enrolled.

The affidavits in answer stated that in 1804 certain rules and articles, differing most materially and essentially from the original ones, were adopted by the society; and that, in 1820 (with the sanction of Lupson, who was then president), certain other rules or articles were adopted by the society, and have been acted upon (with some alteration as to allowances) ever since, but were never exhibited at sessions or enrolled. Several members of the society, admitted at various periods from 1816 downwards, stated that, since they had been members, the rules of 1794 had not been acted upon by the society, nor had their existence been known to deponents, or, as they believed, to any of the present society, till about 1834; and the general belief of the members, until then, had been "that the present rules of the said society were enrolled," which belief originated "in the representations made to the society to that effect by the said Thomas Lupson."

Lord Denman, C.J., delivered the judgment of the court.

This was a rule for a mandamus to justices to issue a summons to the president, &c., of a friendly society, and to hear and determine the complaint of Thomas Lupson against the society for having expelled him. The cause shown was that, under the circumstances hereinafter stated, the friendly society in question was no longer within the provisions of Statute 33 Geo. III., c. 54, and consequently that the magistrates had no jurisdiction. In answer to this, it was, amongst other things, urged that some of the members had recently declared that the society was still existing within and governed by the provisions of the Act. We mention this in the first place to dispose of it at once, because we can attach no importance to the opinion or declaration of all or any portion of the members of this society as to the legal character now to be attributed to it. In order to make the rule absolute we must satisfy ourselves that the magistrates have jurisdiction to make a legal order in the matter in which their interference is required. An order that may be enforced if resisted, and the enforcement of which will not expose the magistrates to the payment of damages. It appears from the affidavits that the society was established in 1755; in 1794 their rules were duly enrolled, and continued to be acted upon until 1804: at that time new rules were made, in many respects essentially different from the former; these were intended to be enrolled, but, in fact, were not; they were, however, acted on till 1820, when further alterations were made, which, like the former, never have been enrolled. In both instances the omission to enrol appears to have been unintentional, and the misfortune rather than the fault of the society. The application to the magistrates is upon the footing that the rules enrolled in 1794 are still the governing rules of the society. In support of this, the third section of 33 Geo. III., c. 54 is relied upon. That section enacts that no rule once confirmed by the justices at sessions shall be altered, rescinded, or repealed, except in the manner there provided, and then proceeds thus "and such alteration or repeal shall be subject to the review of the justices," and shall be filed in the

manner hereinbefore directed; and that no such rule, order, &c. "shall be binding, or have any force or effect, until the same shall have been agreed to and confirmed by such justices, and filed as aforesaid." It is contended, therefore, upon these words, that, as the new rules by which the former enrolled rules were intended to be repealed have never been confirmed or filed at sessions, they have no force or effect whatever; and it is thence inferred that the old rules are still in operation, and the society, in point of law, still governed by them, and so within the protection of the statute. As far as respects the new rules, it appears to us that the argument is well founded; whether the inference drawn as to the present binding power of the old rules be correctly drawn is the question. The section under consideration is manifestly framed to regulate the manner in which any society of this sort shall proceed in the formal repeal or alteration of a confirmed rule, specifying the notices and proportion of consenting members which shall be necessary; and when, in compliance with these requisitions, an old rule shall have been altered or repealed by a new rule, it further, and in addition, provides that such new rule shall not be binding or have any effect until confirmed and filed at sessions. For anything, therefore, intended to be effected by the new rules, it is enough to say that, for want of confirmation and filing, they are at present inoperative; but as it must be taken upon these facts that, by common consent of the then existing members, the old rules where abandoned in 1804, and have practically had no operation since, and, further, as it must be presumed that, in an interval of thirty-three years many of the then existing members must have died, and many new members must have been added, who have become so upon the faith that the new rules were the governing rules of the society, and who may have been in entire ignorance of the old rules, it is by no means a clear consequence that the old rules can, at this moment, be resorted to as in existence, even for the purpose of holding the society together under the statute. If they are binding rules for that purpose, they are so for all purposes; they may, for anything we know, provide different rates of contribution and relief from those now acted on, and may vary the rights of the members in other material points; and there would arise the gross injustice, that members added since 1804 may find themselves now upon a totally different footing from that on which they understood themselves to stand when they joined the society. The only decided case exactly in point, which was cited is *Ex parte* Norrish. That was an application made in 1821 to the Master of the Rolls, by petition, in order to a summary proceeding against a late trustee of a friendly society under the eighth section of the statute; that mode of proceeding could only be adopted in case the society was existing under the statute; the same point, therefore, arose as here. The facts were, that the rules had been allowed and filed in 1813: soon after, some dissatisfaction with the conduct of the officers having arisen, a committee had been formed to regulate the affairs of the society, and from that time the rules had not been attended to, the meetings not held, nor payments made, nor officers regularly appointed. The Master of the Rolls said (citing the words of Sir T. Plummer, M.R.) "that it was a great" "misfortune to these societies that they were in the habit of" "deviating from their rules. Here since the year 1813 they had ceased" "to act upon the rules that had been registered, and had proceeded" "upon a different plan. What had been done since had been done" "by agreement, and not under the regulations. They had become" "dissolved, and the court had no longer any jurisdiction under the Act." In this case, it is true, the third section does not appear to have been

noticed; and, in the view which we have taken, it is not applicable because there had been no attempt by new rules formerly to alter or repeal the old ones. The Master of the Rolls decides upon the effect of a practical abandonment of the old rules, which is the difficulty that presses upon our minds in the way of issuing the mandamus prayed for.

We are aware of the extreme inconvenience of putting the claimant in the present case to seek his relief in a court of equity; but, with the authority of *Ex parte* Norrish before us, and the serious doubts (to say no more) which we entertain whether the magistrates have the jurisdiction which the writ would command them to exercise, we should violate our well established rules if we were to make the rule absolute; and, whatever may be the amount of inconvenience in the particular case, we perhaps do that which is more than proportionately convenient in general, if by discharging the rule we cause it to be generally understood that these societies cannot depart from their established rules, or neglect to comply with the statute in the mode of altering or repealing them, without exposing their property to danger and themselves to great expense, loss and inconvenience.

Rule discharged.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 13.

CASE 6.

THE QUEEN AGAINST SIR ST. VINCENT COTTON, BART., AND ANOTHER, JUSTICES OF THE COUNTY OF CAMBRIDGE.

Friendly Society—New Rules invalidly made—Old Rules remain in force.

COURT OF QUEEN'S BENCH. 1850. *Thursday, June* 6.

The rules of a friendly society, established in 1817, were duly made and confirmed at Quarter Sessions under Statute 33 Geo. III., c. 54. Afterwards some new rules were made; but they were neither made nor confirmed in the manner required by section 3 of the statute. One of such new rules altered the amount of entrance money, and another the amount of weekly allowance to sick members. A sick member, who had entered the society since the making of the new rules, and had occasionally received relief under them, summoned the stewards to Petty Sessions for non-payment of a weekly allowance under the new rules. The justices dismissed the complaint on the ground that the old rules had been abandoned, and that the new rules were void, and that the society, therefore, was no longer within the statute so as to give the justices jurisdiction.

Held, that the new rules being void, the old rules were not affected by them, and that the justices had jurisdiction to order payment of a weekly allowance under the old rules; and the court made a rule absolute, under Statute 11 & 12 Vic., c. 44, s. 5, requiring them to hear and determine the case.

Lord Campbell, C.J., in giving judgment, said, if it had appeared that this society was dissolved, we must have discharged the rule. But this does not appear to be the case. The society was once duly constituted under Statute 33 Geo. III., c. 54. How has it ceased to exist as such a society? Certain alterations have been made in its rules, which were not regularly made, and which have never been confirmed. But the society must be considered as a still subsisting society, over which the justices have jurisdiction. This case is distinguishable from Regina *v.* Lord Godolphin where the ground of the decision was that the intention of the society had been entirely to abandon the old rules and to adopt a new set of rules. Here there have been only partial alterations from time to time, and, though they have been irregularly made, yet the society is a regular subsisting society, with rules properly allowed and enrolled, which have never been repealed or duly altered. The complainant first of all claimed nine shillings a week; that was objected to, because the rules allowing that sum were irregular. He then claimed seven shillings under the old rules; and that also was objected to, because the rules allowing that sum had been superseded. I think the justices had jurisdiction, and that they should have determined the case. It is much to be regretted that they did not, because the real question was whether the sickness was so occasioned as to entitle the complainant to relief.

Pattison, J. :—Regina *v.* Godolphin is certainly similar to the present case, but distinguishable. There the only objection was that the new rules had not been confirmed. So far the two cases tally. But here the objection is, not only that the new rules have not been confirmed, but that they were not well made. Besides in Regina *v.* Godolphin it was doubted whether the old rules remained. That point was not determined; but the court said it was so doubtful that the complaint must be left to a court of equity. But here, if we are satisfied, not only that the new rules were not confirmed, but also that they were never duly made, they can have no effect in abrogating the old rules, but are a mere nullity, which cannot affect them. This is an answer to the question raised, whether a person who comes into the society after the new rules is affected by them. Another question is, whether as the complainant claimed 9/- under the new rules, the justices on such complaint could adjudge him 7/- under the old rules. I do not see why they could not; they are not tied down to the form of the complaint; the substance of the complaint was that the stewards of the society withheld from him the allowance to which he was entitled by its rules. The justices should have entertained the complaint. Any confusion which exists might be easily set right by having the new rules properly made and confirmed.

Coleridge, J. :—Some distinctions have already been made between this case and Regina *v.* Lord Godolphin. It should also be remembered that at the time when that case was decided, if justices were compelled by mandamus to do an act, and it turned out that the act, after all, could not be done legally, they were liable to an action. This court, therefore, refused to issue a mandamus to them in doubtful cases, unless they were properly indemnified. But now, in consequence of Statute 11 & 12, Vic., c. 44, by which (section 5) justices are protected when they act in obedience to the process of this court, the burden is shifted; we may issue our process to the justices, even where the law is not quite clear; and the person to be affected by the act commanded may try the

question by resisting the order of justices. But if we were now to refuse to make this rule absolute, we should pronounce this society to be a non-existing society within the Friendly Societies Acts, and so drive the complainant to have recourse either to a court of equity or to the compulsory arbitration of the Registrar under Statute 9 & 10, Vic., c. 27, s. 15. By making the rule absolute, we let in both the grounds of answer to this complaint that there has been, in the practice of the society, such a departure from the old rules that they are no longer in force, and that the complainant, upon the merits, ought not to have the relief he seeks.

Erle, J. :—If the main ground of argument had been established in fact, that certain terms of contribution and relief had been agreed on, I should feel a difficulty in allowing the complainant to treat the agreement as void. But the fact is not so. It appears that certain alterations have been made in the rules in an illegal manner. The attempt, then, to alter the rules has failed ; and the old rules are in force. The conclusion I come to is, that this society is still a subsisting society, and that the complainant has a right so to treat it, and claim relief from it.

Rule absolute.

N.B.—See Friendly Societies Act, 1896, 59 & 60, *Vic., cap.* 25, *sec.* 13.

CASE 7.

COURT OF EXCHEQUER.
1854.
Thursday, January 19th.

DEWHURST *v.* CLARKSON.

Friendly Society—Rules—Amendment that has been registered is valid notwithstanding any irregularity in the manner in which it was made.

Where an amendment of the rules of a friendly society has received the barrister's certificate, under Statute 4 & 5 Wm. IV., c. 40, s. 4, such amendment is valid, though there has been no resolution of the society in compliance with the enactments of the Statute 10 Geo. IV., c. 56, s. 9, or with the rules of the society incorporating that section.

The rules of a society directed that three trustees should be appointed, of whom one should be treasurer, in whose names the funds of the society should be invested ; and that the treasurer should invest the unappropriated stock exceeding £50 as the board of management should direct, pursuant to Statute 13 & 14 Vic., c. 115. Three trustees were elected but a fourth person was elected treasurer. *Held* that the three trustees could not sue a former treasurer for the balance in his hand under these rules ; and that they had no title to do so under Statute 10 Geo. IV., c. 56, or Statute 13 & 14 Vic., c. 115, which were prior to the rules taking effect.

CASE 8.

EAST DEREHAM PETTY SESSIONS, 1884. *July* 18. *Before* THE JUSTICES.

REGISTRAR OF FRIENDLY SOCIETIES *v.* UNITED FORESTERS CLUB AND OTHER SOCIETIES.

Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap.* 60, *sec.* 14)—*Annual Returns—Defunct Societies—Compliance after Notice—Case Withdrawn—Where Failure to Comply —Penalties Imposed.*

The secretary of the "United Foresters" Club, held at the Fox and Goose public-house, North Tuddenham, was summoned for failing to send to the Chief Registrar of Friendly Societies the annual return of the receipts and expenditure, funds and effects of the said society. Mr. T. M. Wilkin, of Lynn, defended. He contended that his client represented a new society that had never been registered. The old society, the "United Foresters," was defunct, and therefore the magistrates had no jurisdiction. Mr. Tompkins, chief clerk in the Registry of Friendly Societies, 28, Abingdon Street, Westminster, who appeared on behalf of the Chief Registrar in support of the information, said the "United Foresters" was an enrolled society, but of a very ancient date. The Act clearly laid down that returns should be made. He (Mr. Tompkins) went to Tuddenham a short time ago, and in reply to enquiries, was informed that the society was still held there. A form of annual return had been sent every year, but had not been returned. The forms had been sent for the past eight years, and no objection had been raised. The chairman—Mr. Wilkin denies the existence of the society. Mr. Tompkins—From my enquiries I learned that it was still existing. Of course if no one answers to the summons it falls to the ground. The chairman—Unless it be proved that the society still exists. Mr. Wilkin here handed in a copy of the rules of "A Friendly Society," held at the Fox and Goose Inn, Tuddenham, and which was founded in 1794. Mr. Tompkins—The summons is taken out against the "United Foresters." The Magistrates' Clerk (Mr. W. M. Barton)—And it appears to have fallen into the hands of the secretary of the "Friendly Society." Mr. Tompkins—I cannot prove where the "United Foresters" are gone to. Mr. Wilkin contended that his client was not in a very agreeable position. He was summoned to make returns for a defunct society, whilst the society he did represent had existed just ninety years. Mr. Tompkins, in reply, said the present defendant had no business to be there. The summons was taken out against the "United Foresters." There seemed to be no such society, and the summons fell through. There was no charge against the friendly society, and, therefore, Mr. Wilkin was out of court, for he represented nobody. The chairman—The summons is taken out against a society that does not appear, and seems to be defunct. Mr. Tompkins—And, therefore, the summons falls through. The chairman—Yes. The defendant, representing the friendly society, had nothing to do with the "United Foresters," which was the one that had been summoned, and the friendly society, therefore, left the court without a stain on its character. (Laughter).

The secretary of a society held at the Rose Cottage, Wendling, was summoned for a similar offence. Mr. Tompkins asked to have the case withdrawn, as the society had complied with the Act, and had made returns. Case withdrawn.

The secretary of the Court Pride Albert, No. 2275, A.O.F., held at the Red Hart Inn, Wendling, was summoned for a similar offence. Defendant pleaded guilty. Mr. Tompkin said it occasioned a deal of trouble to follow up all these societies. This society had made a return in 1878. Forms had been sent to the officers every year since, but no notice had been taken of them. Furthermore, in the rules of the society (produced) the duties of the secretary were clearly defined. The returns had been made since the summons had been issued. In answer to the chairman, Mr. Tompkins said the return should be made up to the 31st December in each year, and were due at the Registrar's the first week in June. The chairman—They have six months allowed in which to get them ready to send them? Mr. Tompkins—Yes. These proceedings were not specially taken against this society, but as a warning to others, and it was very necessary to put the Act in force. The secretary said he had entirely forgotten the matter. Mr. Tompkins—There has never been a return since 1878 made by this club. The magistrates decided to hear the next case before giving their decision.

The secretary of the North Tuddenham Friendly Society was then charged with a similar offence. Defendant pleaded guilty. Mr. Tompkins said the form had been sent for years, and no notice taken of the application. Defendant—The secretary died a short time since. The chairman—The secretary never dies. Defendant—There is no notice in our rules for the secretary to send the forms. Mr. Tompkins—That makes no difference. Both defendants were then addressed by the chairman, who said that the failure to send the returns showed negligence on the part of the societies. There was no excuse in saying that the secretary died, as such an office never dies. As soon as a person filling the office dies another fills it, and is equally responsible. There was no excuse for neglect of this kind. The Act was passed for the safety of the public, and for the safety of the members of these societies, and there was good reason in insisting on having the requirements of the law carried out. There has been a wilful neglect of rules, and men who occupied public positions were bound to carry them out. Each defendant would in these two cases be fined 10s., and 15s. Registration Office costs, and 11s. present costs—£1 16s. in all in each case.

N.B.—See Friendly Societies Act, 1896, 59 *&* 60 *Vic., cap.* 25, *sec.* 27.

CASE 9.

NORWICH AND YARMOUTH. 1884. *July* 15 *and* 16.

REGISTRAR OF FRIENDLY SOCIETIES *v.* RATIONAL SICK & BURIAL ASSOCIATION—LOYAL HERRING & BIGNOLD LODGE, M.U.I.O.O.F. —THE FOUNTAIN BENEFIT SOCIETY—AND THE SEAMAN'S FRIENDLY SOCIETY.

Friendly Societies Act 1875, 38 *&* 39 *Vic. cap.* 60, *sec.* 14—*Annual Returns—Failure to send same to Registrar—Penalties imposed.*

The secretaries of the Rational Sick and Burial Association, held at the Lamb Tavern, the Walk; the Loyal Herring and Bignold Lodge,

No. 4410, Independent Order of Oddfellows, M.U., held at the George and Dragon, Hay Hill, Norwich; and the Fountain Benefit Society, held at the Fountain Inn, St. Benedict's, Norwich, were charged with failing to send to the Chief Registrar of Friendly Societies the annual return of receipts and expenditure, contrary to the statute. Mr. Henry Tompkins, chief clerk of the Registry of Friendly Societies, appeared to prosecute. The case of the Fountain Benefit Society was taken first. William Debbage, landlord of the Fountain Inn, appeared in answer to the summons. Debbage said that he had lived at the house for about fifty years, but during that period no such society as the Fountain Benefit Society had ever held its meetings there, nor was he connected in any way with that society. Mr. Tompkins: Singularly enough the name of the secretary is James Debbage. Defendant: That is my brother. Continuing his evidence, witness said that three lodges had held their court at the public house, viz., the Norfolk and Norwich Unity, the Working Bees Lodge, and the Mutual Friendly Society. Mr. Tompkins considered that the best course to pursue in this emergency would be to adjourn the case for a fortnight, and requested the Bench to deal with the case in that way. The application was granted.

The charge against the Loyal Herring and Bignold Lodge was next taken. Mr. Tompkins explained that it was a duly registered society, and in consequence was required, with others, to send to the Registrar of Friendly Societies the annual statement of accounts before the first of June in every year. It was very important that the yearly account should be sent up, and in this case he considered that no excuse could be made by the secretary, as the 8th rule of the lodge expressly provided that the account should be made. No return had been made by the secretary since 1875, although the forms had been sent down every year. In reply to the Bench as to why the prosecution had not been made before, Mr. Tompkins replied that similar cases in other parts of the country had prevented earlier action. The defence by the secretary, Robert John Howard, was to the effect that he had not for the last six or seven years received any forms from the Registrar. Mr. Tompkins said that, even if this were so, the law and the rules of the lodge compelled him to make the return. The notice was sent yearly to the registered office of the society, and not to the residence of the secretary. By Mr. Smith: He could not prove that the notices had been delivered. The Clerk remarked that the Registrar was not bound to forward the notices, the lodge being required to forward the return without notice. Mr. Kennet explained that a society was liable to be fined £5 for this offence, to be mitigated as the magistrates thought fit. The chairman said that the society would be ordered to pay a fine of 10s., with costs £1 12s. 6d.

The case of the Rational Sick and Burial Association was next heard. The secretary is Frederick Chamberlain. Mr. Tompkins said that the facts were almost similar to those in the last case, and gave a brief summary of them. Defendant requested Mr. Tompkins to inform him of the date of his copy of rules. Mr. Tompkins: The 8th of December, 1845. Defendant: The rules that our society has used are dated 1844. Mr. Kennet remarked that since the passing of the new rules the old ones were no longer law. Defendant contended that the society when it first started was governed by general rules, which could not be certified. In 1845 or 1846 the branches became amalgamated, and branches were in

the habit of sending in their annual accounts to the parent society, which in its turn sent the whole account to the Registrar. The Clerk said that the Act of 1875 extended to the branches, and that it did not matter what the parent society did. Whether they were a branch or not they were a society, and were obliged to furnish yearly returns. In the end the Bench inflicted a fine of 10s., with £1 12s. 6d. costs.

John Sones, as secretary of the Seaman's Friendly Society, was summoned for failing to send to the Registrar of Friendly Societies an annual return of the income and expenditure, &c., of the society, according to the Act. Mr. Henry Tompkins, chief clerk to the Registrar of Friendly Societies, conducted the case, and pointed out the necessity of taking these proceedings in order to show the necessity of sending up the returns. Mr. Sones pleaded guily to not sending up the returns, but pleaded as an excuse that he had not been supplied with the necessary forms, and that as his society was a very poor one, and conducted on different rules to most benefit societies, he hoped the Bench would deal leniently with the society. The magistrates inflicted a penalty of 5s., and costs £1 16s. 6d., and pointed out to Mr. Sones the necessity of sending up the returns regularly.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 27.

CASE 10.

NOTTINGHAM SUMMONS COURT, 1884, *Dec.* 4. IMPERIAL ORDER OF ODDFELLOWS *v.* BARLOW.

Friendly Societies Act, 1875, 38 & 39 *Vic., cap.* 60, *sec.* 32.—*Neglect to furnish Annual Returns to Grand Lodge—Rules—Fine—Validity of—Penalty imposed.*

On December 4th, 1884, in the Summons Court, Nottingham (before Alderman Gripper and Mr. Fitzhugh), John Barlow was charged under the Friendly Societies Act, 1875, with having failed to pay a fine of 10s., incurred and payable to the Grand Lodge of the Nottingham Ancient Order of Oddfellows, for having neglected to furnish to the said Grand Lodge the annual returns of the Orderbeck Lodge, No. 1,042, of Epperstone, of the said Order, within the form prescribed by the general constitutional laws of the Order. Mr. Black prosecuted, and said the defendant was summoned, he being the secretary of the Orderbeck Lodge, for payment of the fine for having neglected to furnish the returns. The Act of Parliament required the Grand Lodge to furnish the Registrar with the returns of the whole Order, and it was imperative that the Grand Lodge Secretary should be able to furnish such returns, which could not be done unless the branch lodges furnished their returns. Defendant had failed to forward his returns, and in consequence he was fined the usual penalty. That was the first case in which proceedings had been taken, as a warning to other branch lodges. The Grand Lodge were liable to be prosecuted unless they furnished the returns of the lodges to the Registrar. The constitutional law showed that every branch of a lodge should, by the end of March, send to the Grand Lodge the returns for the year ending the previous December, and if they neglected to do so they were liable to a penalty

of 10s. Mr. W. Carver said he was the Grand Lodge Secretary of the Imperial Order of Oddfellows, Nottingham. He produced the original certificate of the Registrar requiring the annual returns to be furnished, and the rule authorising fines to be paid to the Grand Lodge instead of the Provincial Grand Lodge. On several occasions he had applied to the defendant, as secretary of the Orderbeck Lodge, for the annual returns of the year ending December 31, 1883, but he had not received the return. In consequence, he was unable to supply the Registrar with the annual returns. By defendant: He had received certain returns, but not in the form as required by the Registrar. Defendant called Joseph Knowles, market gardener, Lowdham, who stated that he was Imperial Father of the Orderbeck Lodge, sitting for the second time. The reason the lodge had neglected to supply the returns to the Grand Lodge was that the balance-sheet had been improperly made out, and in consequence challenged as being incorrect. They were therefore at present verifying the mistakes, and could not furnish the returns, Mr. Black said that did not affect the prosecution, as the Grand Lodge had nothing to do with the balance-sheet, all they required was the returns. Ald. Gripper said the only consideration for them was whether the secretary of the branch had furnished the returns. It was absolutely necessary in order that the Grand Lodge might furnish the Registrar with the returns that the minor lodges should furnish their returns to the Grand Lodge Secretary. If they neglected to do so, they were liable to a penalty of 10s., which sum he should order to be paid.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *secs.* 27-28.

CASE 11.

COURT OF QUEEN'S BENCH. 1857.

BECKETT *v.* WILLETTS.

Friendly society—Appointment of trustees—13 *&* 14 *Vic., cap.* 115; *and* 18 & 19 *Vic., cap.* 63.

May 8. Where trustees of a friendly society, established under 13 & 14 Vic., c. 115, were appointed after 18 & 19 Vic., c. 63, had become law. *Held* that it was not necessary to send to the Registrar the resolution appointing the trustees; and that such trustees were liable to be sued for the debts of the society incurred before their appointment.

This was an action upon a printer's bill brought against the defendants as trustees of a friendly society duly registered and certified, May 28, 1855, when 13 & 14 Vic., c. 115, was law. No trustees were appointed until March 4, 1856, when by a resolution of the society the three defendants were appointed trustees. At that time the 18 & 19 Vic., c. 63, repealing 13 & 14 Vic., c. 115, had become law, and no notice of the resolution was given to the Registrar of Friendly Societies. At the trial it was argued for the defendants, that by the society's rules and 13 & 14 Vic., c. 115, s. 13, the resolutions appointing the trustees ought to have been transmitted to the Registrar to make the appointment valid, and this not having been done the action would not lie; and moreover, as to £44, part of the claim, the defendants could not be liable, because it was for expenses incurred before their appointment. The plaintiff had a verdict, leave being reserved to move for a nonsuit, a rule *nisi* having been obtained.

Mr. Atherton, Q.C., and Mr. Day showed cause.—It is not necessary under 18 & 19 Vic., c. 63, to transmit to the Registrar a resolution appointing trustees, in order to make that appointment valid. Here the defendants were appointed after that Act had passed, section 5 of which confers upon all societies the exemptions and privileges of societies established under that Act. The rules of the society framed under the old Act do not make the sending of the resolutions a condition precedent, and if they did they could not bind a stranger. As to the sum of £44 no distinction can be made, for by sections 18 and 19 of 18 & 19 Vic., the trustees for the time are the persons to be sued; but if there were no trustees, the defendants would be liable, as they were members of the society at the time of the work being done.

Mr. Hawkins and Mr. Lewis, contra: The defendants are liable as trustees of the society, and as such only can they be liable. They were appointed trustees under rule 4 of the society, which says that the appointment is to be transmitted to the Registrar, according to 13 & 14 Vic., section 13 of which says "that no person shall be deemed a trustee until the resolution has been transmitted to the Registrar." The statute requires that the rules shall contain a provision relative to the appointment of trustees, and, therefore, the fourth rule is not in accordance with the statute, unless the transmission to the Registrar is a condition precedent. [Lord Campbell, C. J. . But can the trustees say they are not duly appointed?] They can, because they are not sued upon any personal liability. [Lord Campbell, C. J.: But the society is sued, and it cannot say the appointment is not regular.] Section 17 of 18 & 19 Vic. enacts that if no trustees are appointed the treasurer is to act as trustee, as the existence of trustees is not necessary to the maintenance of the action. As to £44, the debt was contracted before the appointment of the defendants.

Lord Campbell, C. J.: At the trial I considered the only serious objection to be, that no notice of the appointment of trustees had been transmitted to the Registrar, but that difficulty is now got over. 13 & 14 Vic. was repealed before the appointment, and 18 & 19 Vic. confers the power of appointing trustees, without the condition of sending the resolutions to the Registrar. I think, therefore, that these defendants were duly appointed trustees, and are liable to be sued for the whole of the debt. Wightman, Erle, and Crompton, J.J., concurred.

Rule discharged.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 25.

CASE 12.

COURT OF QUEEN'S BENCH.
1854. *Nov.* 9.

EX PARTE LONG.

Friendly Societies Amendment Acts—4 & 5 Wm. IV., cap. 40, *sec.* 7; 13 & 14 *Vic., cap.* 115, *sec.* 24—*Arbitration—Jurisdiction of magistrates.*

Where a dispute between a friendly society and one of its members has been referred to arbitration under section 7 of 4 & 5 Wm. IV., c. 40, the award of the arbitrators is final, and a magistrate has no jurisdiction to hear the dispute unless it can be shown that such award is a nullity.

Mr. C. Hutton moved for a rule calling on David Jardine, Esq., one of the Metropolitan police magistrates, to show cause why he should not hear and determine a dispute between Amy Long, the widow of one Charles Long, and a friendly society called "The United Kingdom Benefit Society."

It appeared by the affidavits that the husband of applicant became a member of the society in 1841, and that in October, 1853, he fell ill and was declared on the sick fund of the society, and continued to receive assistance from that fund until the month of February, 1854, when he received a letter from the secretary informing him that his name was erased from the list of the members for breach of the 11th rule of the society, which was to the effect that any member found transacting business for profit or reward during the time he was receiving assistance from the sick fund of the society should be excluded from the society. Charles Long died on the 25th April, 1854, and the claim made by his widow, notwithstanding his expulsion, had been referred to arbitration in accordance with the rules of the society.

The arbitrators had decided against her claim, and the present application was under 4 & 5 Wm. IV., c. 40, s. 7 (Friendly Societies Amendment Act), to compel the magistrate to hear and determine the dispute.

Mr. C. Hutton: It is submitted that the award of the arbitrators is bad, as having been made contrary to the rules of the society; there was no evidence of working for profit or reward. The offence charged was that during the time he was receiving aid he had wheeled a barrow for his wife, containing linen, some 400 yards. [Lord Campbell, C.J.: There was then some evidence; it was for the arbitrators to consider its value.] He was not summoned before the society to answer for his breach of its rules, and this objection when taken before the arbitrators was not allowed by them. [Lord Campbell, C.J.: If they refused to hear the objection that the deceased had not been summoned, you might impugn the award on that refusal, but it appears they heard the objection and refused to allow it. They did not refuse to hear the evidence on it.] That is so. [Lord Campbell, C.J.: It was for them to determine whether or not they would allow the objection.] The award was made corruptly; one of the arbitrators was dead. [Lord Campbell, C.J.: There are no facts in the affidavits to warrant that conclusion. We must suppose the arbitration to have been conducted properly. You have to show that the award was a nullity. It is not a nullity because it was against the weight of evidence. You must show that the deceased was not properly expelled—that he died a member of the society.] In Regina *v.* Grant, 14 Q.B, 43; 21 L.J., M.C. 59, an award made not according to the rules of the society was held to be void. [Coleridge, J.—There the award was a nullity because the arbitrators only heard one side and refused to hear the other.] [Lord Campbell, C.J.—You must show that the award here is a nullity to give the magistrate jurisdiction to hear the case.] He also referred to Regina *v.* Evans, 3 Ell & B. 363; Chitty's Statutes, tit., "Friendly Societies," p. 190, note (a).

Lord Campbell, C.J.: I regret that no ground has been made out for our interference in this case. It is a hard case, but hard cases, it is said, make bad law. The magistrate can have no jurisdiction where the award is not a nullity. The arbitrators did not refuse to hear the

evidence; they heard it, and it was for them to give what weight to it they thought right. The strongest point urged in support of the application was as to the objection having been over-ruled, that the deceased had not been heard before expulsion. Still, the arbitrators did hear the objection, and in spite of the objection decided that the expulsion was regular. If *mala fides* on the part of any of the arbitrators had been satisfactorily shown the award might have been treated as a nullity; but this charge of *mala fides* was not supported by the affidavits.

Coleridge, J.: I am of the same opinion. As to the argument of "hardship" employed in support of the application, it is one that cannot be listened to and ought not to be put forward. Parties who become members of these societies agree that their disputes shall be settled by arbitration, and when an award is made against them they must submit to the decision. The only question in this case is, has an award been made? To give the magistrate jurisdiction, some defect making the award a nullity or that it has been decided with *mala fides* must be clearly shown. Now, an award has been made, and there is not sufficient evidence of *mala fides*. We cannot listen to mere opinions as stated in the affidavits in support of such a charge. It is admitted that the objection that the deceased was not summoned was heard. The arbitrators may have decided wrongly in not giving weight to it, but still they heard it; the most that can be said is, that they came to a wrong conclusion. The case of Regina *v.* Grant is perfectly consistent with our decision. There one allegation was that the arbitrators had neglected to make any award at all, that they had wrongfully refused to hear evidence, and that, therefore, the instrument was no award at all. The court determined, and rightly, that it was no award. That is not at all like the present case. Here the arbitrators have heard the evidence, and however mistaken they may have been in their decision, still they heard the case, and their award is valid.

Wightman, J.: The jurisdiction of the justices only arises in case the arbitrators neglect or refuse to make an award. Here they did make an award, but it is said that the arbitration was so conducted that their award is a nullity. It is said, first, that they decided wrongly, that the member expelled had not worked for profit and reward; and secondly, that they over-ruled one of the rules of the society. As to the first objection, they are to exercise their own judgment, and they have done so. As to the second, they are to determine whether the rule was infringed. They may have come to a wrong conclusion as to these points, but they have determined them to the best of their judgment. There is nothing to show *mala fides* on their part. Their award cannot be treated as a nullity, and that is the only ground for granting this application.

Erle, J. . I am of the same opinion. The question here is have the arbitrators made "an award?" Nothing is clearer than the distinction between "no award" and a "mistaken award." If persons select a mode of settling their disputes it is important that they should be bound by it; therefore, although, by coming to our present conclusion, we may inflict an apparent hardship on the party complaining, yet the effect of our decision is advantageous to these societies. The case of Regina *v.* Grant has been properly distinguished from the present.

Rule refused.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

DIVISIONAL COURT, QUEEN'S BENCH.

CASE 13.

THEQUEEN *v.* GRANT.

1848. *Nov.* 15. 1849. *July* 12.

Order of Justices—Jurisdiction—Conclusiveness of facts stated in order—Friendly Society—Neglect of Arbitrators to make award within 4 & 5 Wm. IV., cap. 40, sec. 7.

On a dispute between the members of a friendly society, called "The Leeds Philanthropic Society," and A. B. whom they had expelled, the arbitrators appointed by the rules of the society made an award that A. B. should be expelled the society. A. B. thereupon made complaint to a Justice of the Peace under the 4 & 5 Wm. IV., c. 40, s. 7, that he had been wrongfully expelled, and that arbitrators had been appointed who had neglected and refused to make any award; and two justices by their order, after reciting the above complaint, adjudged that "all and singular the allegations were true" and ordered that A. B. should be reinstated in the said society. *Held* that the statement in the order that the arbitrators had neglected to make an award was not conclusive; but that on motion to quash the order of justices the circumstances under which the award was made might be gone into on affidavit.

There were contradictory affidavits as to whether the arbitrators wrongfully refused to hear evidence on the part of A. B. *Held* that there being sufficient evidence to warrant the conclusion to which the justices had arrived, it was to be presumed that they were right as to fact.

Also, that such facts warranted the statement that the arbitrators had neglected to make an award, and that the order of justices was therefore good.

Though the meetings of the society were held at Leeds, yet as the society was open to country members, and A. B. himself resided at Wakefield, where the circumstance occurred which was the ground of his expulsion, the justices of the West Riding had locally jurisdiction to determine the matter.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25. *sec.* 68.

CASE 14.

COURT OF QUEEN'S BENCH. 1864. *June* 9.

In the Matter of a Plaint of

THE SKIPTON INDUSTRIAL CO-OPERATIVE SOCIETY (LIMITED) *v.* PRINCE.

Prohibition—County Court—Practice.

The rules of an industrial society provided that in case of disputes between a member and the society, or of complaint against an officer, the matter should be settled by arbitration. P., a member, was appointed a salesman of the society, and after he had resigned his appointment disputes arose as to his accounts, which the society proceeded to settle by

arbitration; and an award having been made against P., the society proceeded to enforce it, under the 18 & 19 Vic., c. 63, s. 41, by issuing a plaint in the County Court, on which P., before the case had been brought before the judge of the County Court, applied for a prohibition, on the ground that this was not a matter which could be settled by arbitration. *Held* that the application was premature, as the County Court was the tribunal to decide, in the first instance, whether, on the facts, the matter was such as could be decided by arbitration.

This was a rule calling on the plaintiffs to show cause why a writ of prohibition should not issue to the judge of the County Court of Yorkshire, holden at Skipton, to prohibit him from proceeding further with the above plaint.

It appeared from the affidavits that the defendant Prince was a member of the society, and had also been appointed and acted as their salesman; that he had given notice and left their service, after which disputes arose as to his accounts, and the matter was decided by three arbitrators, who made an award that the defendant was indebted to the society in £18. The plaint was then issued to enforce this award, but had not been heard by the judge. By rule 17 of the society (which had been re-registered under the 25 & 26 Vic., c. 87) salesmen and other officers necessary for conducting the business were to be appointed and removed by a committee of management.

By rule 26, "In case of a dispute between the society and any of its members, or of members or persons claiming on account of a member or under the rules, or of any complaint against any member or officer, application may be made to the officers and committee for redress; but should the party not receive satisfaction, appeal may be made to a general meeting of the members of the society, whose decision shall be final and binding, except reference be made to arbitration."

Rule 27. "If any dispute arise and cannot be settled according to the foregoing rule, it shall be referred to arbitration, for which purpose, at the first meeting of the society after these rules are certified by the Registrar, shall be named and elected five arbitrators, none of them being directly or indirectly beneficially interested in the funds of the society; and in each case of dispute the names of the arbitrators shall be written on pieces of paper and placed in a box or glass, and the three whose names are first drawn out by the complaining party, or by someone appointed by him, shall be the arbitrators to decide the matter in dispute."

It was also sworn that all the officers, including salesmen, of the society were in practice required to be and were members.

Mr. T. Jones shewed cause: By the 25 & 26 Vic., c. 87, s. 15, the provisions of the Friendly Societies Acts apply to the societies registered under that Act, as to settlements of disputes by arbitration; and by the 18 & 19 Vic., c. 63, s. 40, all matters in dispute between the members and the society are to be decided as directed by the rules; and then, by section 41, jurisdiction to enforce the decision of the arbitrators is given to the County Court. The County Court, therefore, had jurisdiction in the present case, unless this was not a dispute between a member and the society, as the defendant contends. All the officers of the society are members for the express purpose of having disputes settled by

arbitration. At all events, the question whether or not this is a dispute between a member and the society is a doubtful point; and it is for the judge of the County Court to decide whether all has been done to give the arbitrators jurisdiction; this is a judicial act, and the court cannot interfere by prohibition.

[Cockburn, C. J.: The County Court clearly has jurisdiction between the society and its members, and the judge has jurisdiction, therefore, to decide whether upon this award the dispute is between the society and a member.]

Mr. Quain (in support of the rule): The judge cannot give himself jurisdiction by deciding contrary to the facts. Morrison *v.* Glover shows that this cannot be a dispute between the society and a member.

[Cockburn, C. J.: I do not see how we can interfere at present. If the judge decides contrary to the facts we might interfere, but prohibition is not granted where the court below is the tribunal to decide in the first instance and the case has not been before the inferior court.]

The defendant is bound to come promptly.

[Mellor, J.: Yes; but we cannot interfere till it is shown that there is an excess of jurisdiction.]

Per Curiam—Cockburn, C. J., Mellor, J., and Shee, J.

Rule discharged.

CASE 15.

LEEDS COUNTY COURT.
August, 1891.
JUDGE GREENHOW.

TRUSTEES OF THE LEEDS DISTRICT OF THE GRAND UNITED ORDER OF ODDFELLOWS *v.* THE MOUNTAIN FLOWER LODGE.

Friendly Society—Rules of Order and District—Unpaid Fines—Secession—Informalities and Disregard of Rules—Arbitration—Award of Arbitrators enforced.

This was an action to recover the sum of £39 6s., for levies and fines, from the trustees of the Mountain Flower Lodge of the Leeds District associated with the Order. Mr. Child appeared for the plaintiffs, and the defendants were represented by Mr. Armstrong. According to the case for the plaintiffs, the defendants' lodge was associated with the Grand United Order of Oddfellows, and was accordingly amenable to the rules of the Order as well as to those of the district, and their own. District rule 31 provided that a levy should be made upon all lodges, and laid down the basis upon which such levy was to be made, one of the objects being to provide a funeral fund. The claim in the present action was for unpaid levies and fines that had been made in accordance with this rule. The reason alleged for the non-payment of the amount stated was that the defendants claimed that their lodge had seceded

from the district and the Order. In answer to this the plaintiffs said that an application for secession had been made by the defendants, but had not been granted owing to informalities and disregard of the rules, and notice of such rejection had been forwarded to the defendants, but no notice was taken of it. In May last a levy of £19 11s. 6d. was made on the defendants, but this also, it was stated, they had ignored. Fines were imposed, but these, too, were ignored. The matter was submitted to the District Committee by way of arbitration in the usual way, with the result that a decision was given against the defendants. The object of the present application was that his Honour might enforce that decision. This his Honour agreed to, verdict being for the plaintiffs for the amount claimed with costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 16.

WILSON *v.* ALFRED.

SHEFFIELD COUNTY COURT, 1892, *Feb.* 11*th.*

Friendly Societies Act, 1875, 38 & 39 *Vic.*, *cap.* 60, *sec.* 22 — *Claim for Levies—Amendment of Rules—Arbitration — Suspension — Award of Arbitrators enforced and claim allowed.*

This was an action in which the plaintiff was Mr. Francis Samuel Hoyland Wilson, of 50, Snigg Hill, Sheffield, general merchant, and the treasurer of the Sheffield and Hallamshire District of the Ancient Order of Foresters, and the defendant was Mr. Thos. Alfred, of 120, Clough Road, Sheffield, clerk, who was sued in his representative capacity as secretary and a steward of the Court Overend, No. 3,905, of the Order of Foresters. The plaintiff asked in the County Court for an order under the Friendly Societies Act of 1875, 38 & 39 Vic., c. 60, s. 22, enforcing a decision of an arbitration committee of the district, dated June 10th, 1891, directing the defendant court to pay the sum of £19 7s. 5d. and 15s. 8d. expenses, total £20 3s. 1d., to the plaintiff, as treasurer of the district. The plaintiff was represented by Mr. A. Muir Wilson; Mr. T. E. Ellison, barrister (instructed by Messrs. Auty and Sons), was for the defendant.

Mr. Wilson, in opening the case, explained the rules of the Ancient Order of Foresters with reference to the settlement of questions in dispute by arbitration. He remarked that these institutions were those where brotherly love was supposed to exist, but so far as the defendant court were concerned a more awkward exhibition of the contrary feeling seldom came before the public. In Sheffield there was a combination of the various courts, which was known as the Sheffield and Hallamshire District, and the Overend Court was affiliated with that district. This combination of the lodges enabled them to promote a scheme for an assurance for funeral benefits, and members of courts, when their wives died, were allowed a certain sum, and in the case of a member's death his survivors received a death allowance. In case these death claims on the courts should be so heavy as to swamp the courts, they combined so as to form a guarantee fund

for funerals, the funds for which were supplied by levies made at intervals during the year, and were of course paid out again to them in funeral benefits. The action of the Court Overend, however, seemed to be to receive all they could get, and to pay nothing for the benefits received. An attempt was now being made to make them pay that which it had been decided they were legally owing. Alluding to the merits of the case, he said that in 1889 it was found that the contributions from the different courts of the Order were such as not to make the district sufficiently financial to pay all the claims that might be made upon it. After an actuary's report a new rule was passed, increasing the contributions, and that new rule was registered, and the Court Overend was bound to abide by it. On February 18th a levy of £19 7s. 5d. was made upon the court as their contribution. The only reply the district secretary had received to that was the announcement that the levy was 1s. 6d. too much, and this error was rectified. Several other applications were made for the money, but no reply was received from the defendant court. Subsequently, on June 3rd, a meeting of the Arbitration Committee, composed and elected in accordance with General Law 88 of the Order, was called, and the matter discussed. Their meeting was adjourned to the 10th of the month, and on this latter day the Arbitration Committee made the award that the claim of the district treasurer was a just and legal claim, and ordered the court to pay it and 15s. 8d. expenses. Applications had been made for the money, and no reply received.

Mr. Ellison, for the defence, submitted first that the plaintiff had no right to sue on the part of the Foresters' Society. The proper plaintiffs, he contended, would have been the trustees of the society, or a person appointed under the rules. The rules indicated no person, and therefore the trustees should have sued as the plaintiffs.

Mr. Wilson applied to have the four trustees joined in the action as plaintiffs.

His Honour said he would amend anything that would enable him to try the case between the parties.

Mr. Ellison further argued that the defendant was not the person who should be sued, and that the Court Overend was not before the County Court.

Mr. Wilson then generally applied to add the trustees of the Court Overend as defendants, adding that he would suit Mr. Ellison if possible. (Laughter.) He also pointed out, and said the funny thing was, that if the plaintiff got his Honour's judgment there was no power to enforce that judgment against the defendants. There was nothing either in the rules or the Act to compel them to pay.

Mr. Ellison said that being the case he was surprised the plaintiff should have troubled himself to come there. With regard to the next point, his Honour would see that on the facts of the case the levy was made upon a rule that had been recently passed.

His Honour remarked it was an amendment of an old rule.

Mr. Ellison said the plaintiffs made a levy which was an increased levy in consequence of that amendment. The secretary of the Court Overend went down to the secretary of the district

to see these rules, because although they objected to the rules being passed, they were willing to pay provided the rule had been registered. Mr. Abbott would not show the rule for some reason or other, and that was the origin of this dispute. Then the question arose whether the society was in a position to recover the amount they now claimed, as under rule 29 there was a specific remedy for courts which disobeyed the rules. That remedy was suspension from all benefits; and upon that he contended there had been no arbitration, because having been suspended from the benefits, and having, according to rule, ceased receiving the benefits of membership he was not a member, and therefore there could be no arbitration. That brought them back again to his contention that the suspension was the only remedy the district had under the rule.

His Honour said he could not help thinking that it was a great pity that the district and court of an Order like this could not settle their disputes on a technicality like this without entering the County Court.

Mr. Wilson having briefly summed up and replied on the defence, his Honour reserved his decision to March 3rd.

On March 3rd, his Honour gave his decision in the case. Since the hearing, Mr. Muir Wilson, the plaintiff's solicitor, had altered the plaint note making the trustees of the district sue the trustees of the court.—His Honour said the Hallamshire District got into an unsatisfactory state as regards financial position, and for the purpose of improving it an increased levy was made on the various branches, one of which was Court Overend. This court, however, persistently declined to pay, and it was not only fined, but suspended from all benefits until reinstated. It was contended by Mr. Ellison that because Court Overend had been suspended, that suspended its liability, under the rules of the society. It appeared to him (the judge) that that was not so at all, and although suspended from the benefits and privileges, the court was not suspended from its liabilities. It was quite clear that the suspension was the only mode of acquiring payment, and the way to get rid of the suspension was to pay the levy. There must be a verdict for the amount. Mr. Ellison, who appeared for the defendants, applied for leave to appeal. Mr. Wilson did not object, provided the amount was paid into court.—His Honour granted the application.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 68.

CASE 17.

SHARPLES *v.* PRINCE ALBERT LODGE OF THE ORDER OF DRUIDS.

PRESTON BOROUGH POLICE COURT.

Friendly Society—Sick Pay—Claim for—Non-delivery of Sick Form—Fines—Arbitration—Case to be reheard by Board of Management.

A case of some interest to members of friendly societies came before W. Birley, Esq., and Colonel Pedder, at the Preston Borough Police Court. Edward Sharples, a middle-aged man, who for 23 years had

been a member of the Prince Albert Lodge of the Order of Druids, applied to the Bench for an order upon the representatives of that lodge for the payment of £5 8s., being 12 weeks sick pay, which, as he alleged, had been wrongfully withheld.—Mr. Watson appeared for Sharples, and Mr. Edelston represented the lodge authorities.—The circumstances under which the claim was made were of a somewhat peculiar nature. One of the rules of the lodge, the 29th, provides that when a member is sick and unable to follow his employment, he shall obtain a certificate to that effect signed by the doctor, which must be delivered within a stated period to the secretary. The latter having satisfied himself that the member is financial, reports accordingly, and what is termed a "sick form" is supplied, by means of which the incapacitated member obtains his pay. The rule further requires that the sick form shall be retained by the member until he is again fit for employment. Then, signed by him and the doctor, it must be returned to the Noble Grand Arch within twenty-four hours, the penalty for non-compliance with this regulation being sixpence per day so long as the form is retained beyond the period stated. In the latter part of 1873 Sharples was unwell and incapacitated for his employment, and, in accordance with the rule above mentioned, he obtained a sick form. At that time, however, there was a dispute between him and the lodge in reference to a grant of £15 from the accident fund. The sick form soon after it was obtained by Sharples was handed over to a gentleman named Joynson, who had been deputed to represent his interests in the dispute referred to. On the 24th January, 1874, Sharples applied to the lodge for the sick pay that was then due to him, and he was told to produce the sick form. He applied to Mr. Joynson for it, but that gentleman refused to give it up, and the assistant secretary paid to Sharples, as Mr. Edelston said, under protest, the sum of £2 10s. 10d. Immediately afterwards sick payments to all the members were entirely suspended for twelve months. Sharples, therefore, the following week, when offered 2s. 6d. by the assistant secretary, refused to take it, not, as he said, because he was not sick, but because the payments had been generally suspended. Up to this time the sick form which had been supplied to him remained in the possession of Mr. Joynson, and it had never been signed by the doctor as the rule required. The case in reference to the grant from the accident compensation fund was afterwards carried before the General Board of Management in Manchester, and during those proceedings the sick form was tendered in evidence and given up by Mr. Joynson. The decision of the Board in that case was against Sharples, and a subsequent action brought by him in the Manchester County Court failed to alter the position of affairs. Thus the matter stood until early in the present year, when he was again thrown upon the sick funds of the lodge. He had paid his contributions, equal to 6d. per week, up to December last, but when he applied for sick pay he was told that a sum of £7 18s. 6d. was debited against him. This, it appeared, was the amount of fines for non-delivery of the sick forms that had previously been supplied to him, being at the rate of 6d. per day from the time when he ceased to receive pay to the day when it was delivered up to the General Board. As this had been owing a longer period than the rules permitted, Sharples was suspended, and, as a consequence, declared ineligible for sick pay. Being dissatisfied with the statement, he appealed to the district representatives, who decided in his favour. The lodge, however, again appealed to the General Board of Management in Manchester, and there the decision of district committee was reversed. Strange to say, however, on the occasion

when the matter was before the General Board, the case was heard and decided without Sharples being examined. Although he was in attendance, and prepared to explain his position, he never was given an opportunity of doing so, and the decision was, in point of fact, arrived at behind his back. It was under these circumstances that he carried the case before the justices, and he asked now, in accordance with the Friendly Societies Act, for an order upon the lodge representatives for the payment of £5 8s., being the amount of 12 weeks pay at 9s. per week up to the 8th April last. The fine that had been charged against him he declared had been illegally levied, inasmuch as he had never been in a position to return the sick form to the lodge authorities. Sharples, in cross-examination, admitted that he had been told thirteen or fourteen months ago that this fine was standing in the books against him, and the minute books were produced, from which it appeared that he had attended various meetings of the lodge and asked for time to pay. This, however, he to some extent denied.—Mr. Edelston contended, in the first place, that the Bench had no jurisdiction, inasmuch as Sharples had himself acknowledged the authority of the domestic tribunal by appealing to the district committee. Moreover, he should urge, if that point failed, that the man had been fined by the lodge, and that that fine remained unpaid.—After the matter had been argued at some length, it was decided, on the advice of the magistrates, with consent of the solicitors on both sides, that the case should be re-heard by the Board of Management, Sharples himself to have a fair hearing.—The case was adjourned for two months to admit of this being done, and Mr. Birley expressed the opinion of the magistrates that the man's case was deserving of careful consideration at the hands of the Board.

CASE 18.

TUNSTALL COUNTY COURT, 1892, *June* 10.

HIGH COURT OF JUSTICE, QUEEN'S BENCH DIVISION, 1892. *Aug.* 8. POLLOCK, BARON.

HEATH *v.* THE TRUSTEES OF THE LOYAL OAK LODGE, M.U.I.O.O.F.

Friendly Societies Act, 1875, 38 & 39 *Vic.*, *cap.* 60, *sec.* 22—*Disputes—Claim for Sick Pay—Arbitration—Jurisdiction.*

Held, on appeal, that the County Court Judge had no jurisdiction, and a writ of prohibition directed to issue.

William Heath, a member of the Loyal Oak Lodge, of the Pottery and Newcastle District, Independent Order of Oddfellows Manchester Unity Friendly Society, Harriseahead, sued the Trustees of the Lodge to recover the sum of £11 4s. for 69 weeks sick pay, at 4s. per week, from the 24th January, 1891, to the 21st of May, 1892, less £2 12s. received by him on January 2nd, 1892.

When the action was called on, the plaintiff appeared in person, and Mr. Hollinshead, solicitor, appeared for the defendants, and at once took the objection that the court had no jurisdiction to try the case, upon the ground that the rules of the lodge and the general rules of

the society provide for arbitration in case of dispute, that the dispute in question had already been arbitrated upon, and that the plaintiff's remedy, when he was dissatisfied with the decision of the arbitrators, was by appeal, as provided by the rules. The learned judge stated that he did not consider he had jurisdiction, but adjourned the case, in order that the plaintiff might be legally represented.

On July 15th, 1892, the date to which the case stood adjourned, the plaintiff was represented by Mr. Richardson, barrister-at-law, and Mr. Hollinshead, solicitor, appeared for the defendants. Mr. Hollinshead again raised the objection which he had made on June 10th, on behalf of the defendants, to the jurisdiction of the court. The judge, after hearing the plaintiff's counsel and the plaintiff, gave a verdict in his favour, upon the ground that the arbitration committee had decided that the plaintiff was permanently incapacitated, and, therefore, the court had jurisdiction.

It may be mentioned that the plaintiff brought a precisely similar action against the defendants in the same County Court for arrears of sick pay from the 9th October, 1890, to the 14th March, 1891, amounting to £4 3s. 10d., and claiming an order re-instating him as a member of the lodge, and that upon the hearing on the 10th of April, 1891, the learned judge decided, on the same objection as stated above being taken, that he had no jurisdiction, and nonsuited the plaintiff.

By the instruction of the society, Messrs. Cobbett, Wheeler, and Cobbett, solicitors, Manchester, at once filed an affidavit setting out the facts, and applied through Mr. E. M. Pollock, to the Lord Chief Justice and Mr. Justice Cave, sitting in the Divisional Court, for an order for a summons to issue to show cause why a Writ of Prohibition should not be issued, directed to the learned judge and the plaintiff, to prohibit them from further proceeding in the action. Their lordships ordered the summons to issue, and directed that proceedings should be stayed until the hearing.

On the 8th day of August, 1892, the matter came on for hearing before Mr. Baron Pollock. The society were represented by Mr. E. M. Pollock, instructed by Messrs. Collis and Mallam, agents for Messrs. Cobbett and Co., and the plaintiff was represented by Messrs. Firth and Co., the London agents for Mr. G. H. Hunt, of Hanley, the plaintiff's solicitor. On the application of Messrs. Firth and Co., the matter was adjourned till the 27th of October to enable the plaintiff to file an affidavit in opposition to those filed on behalf of the defendants, the proceedings in the meantime being stayed.

On the 27th of October, 1892, the matter came on for hearing before Mr. Justice Charles. The society were again represented by Mr. E. M. Pollock, and counsel appeared for the plaintiff instructed by Messrs. Firth and Co.

Mr. Pollock referred to the Act of Parliament and the various rules, and contended that where there was a dispute no member could bring an action against the lodge, and such action could only be brought where there was default in payment of an admitted claim. Counsel then went into the rather complicated facts to show that there was a dispute and no claim admitted, and consequently the court had no jurisdiction.

The plaintiff's counsel attempted to show that the plaintiff had done everything to entitle him to sick pay and that there was an admitted claim and that there was no dispute. The judge decided that there was clearly a dispute and the order for prohibition must be made absolute.

A writ was afterwards issued directed to the plaintiff and the County Court Judge which sets forth that the County Court had no jurisdiction to hear and determine the said action and prohibits the learned judge and the plaintiff from further proceeding in the action.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 68.

CASE 19.

TRUSTEES OF THE LOYAL PRINCE OF WALES LODGE, GRAND UNITED ORDER OF ODDFELLOWS *v.* TRUSTEES OF THE WREXHAM DISTRICT.

WREXHAM COUNTY COURT, 1885, *Jan.* 7.

Friendly Societies Act, 1875, 38 & 39 *Vic., cap.* 60, *sec.* 22—*Arbitrators' Award—Action to enforce—Jurisdiction.*

Held that the court had no jurisdiction to enforce award between two societies.

In this case the plaintiffs' claimed "that the Wrexham District should carry out, fulfil, and obey the award of the Committee of Management of the Grand United Order of Oddfellows, duly made on the 11th day of November, 1884, in the matter of an appeal of the said Loyal Prince of Wales Lodge against the said Wrexham District touching a certain dispute that had arisen between the said lodge and the said district, and which award determined and directed that the treasurer of the Wrexham District was bound to receive the amount due from the lodge when it was tendered to him, subject to any deduction on payment of such amount as might be due from the Wrexham District to the said lodge, and the Committee directed that immediate steps be taken to settle the dispute in accordance with such resolution. The Prince of Wales Lodge have agreed to pay any such amount as may be found due from them to the Wrexham District, and have applied to the said district to receive the same, and to fulfil and obey the said award, which the said Wrexham District refuse and neglect to do." Mr. Bennion Acton appeared for the plaintiffs, and Mr. Jno. Jones for the defendants. Mr. Jno. Jones, at the outset, contended that his Honour had no jurisdiction, the rules providing that disputes between members and officials of the Order should be settled by arbitration, pursuant to 38 & 39 Vic., c. 60, s. 22. Mr. Acton said there had been an arbitration in this matter, and his clients came to that court to have the award enforced, as the defendants refused to

carry it out. The defendants were the trustees of the Wrexham District, consisting of 21 lodges, and the plaintiffs were the trustees of one of the 21 lodges. The Order was governed by the Grand rules, the District rules, and the Lodge rules; and if the District and Lodge rules differed from the Grand rules, in any respect, they were *ultra vires*. The Grand rules must prevail in the case of any conflict. His Honour said he did not think this was one of those actions provided for by the Act of Parliament that he could hear. The 22nd section of the Act expressly stated that every dispute between a member, or person claiming through a member, and the society, or an official thereof, or under the rules, should be settled by arbitration. He always looked upon this as meaning disputes between individual members and a society, and not between two societies. Mr. Acton said he was instructed by the Secretary to the Grand Order (Mr. Livesey, of Manchester), that the Executive Committee always understood the meaning of the Act to be "every dispute under the rules," and that the words "between a member," &c., were a mere surplusage. He submitted that the awards of the Committee of Management could be enforced in the County Court. He could find no other machinery, in fact, for enforcing an award under the rules except the County Court. His Honour could not agree with Mr. Acton that the words "a member or person claiming through a member," &c., were mere surplusage; but he thought, on the contrary, that by putting them into the Act and making them prominent, the legislature attached importance to them. He was of opinion that the Act simply contemplated a member or a person claiming on the one side and a society or one of its officials on the other, and that this was the only kind of dispute that he had any power to deal with. It had never occurred to him to doubt section 22 before to-day, as applying to anything else but to a member on the one side and the officers of a society on the other. Perhaps they would like to have the case adjourned. Mr. Acton said this point was a matter of very great consequence. His Honour: I don't think this is a dispute within section 22. Therefore I don't think this court has any jurisdiction to entertain it. After some further legal argument the case was adjourned to the next court. Mr. Jno. Jones applied for costs. His Honour said he should not entertain the question of costs then. If, however, Mr. Acton did not satisfy him at the next court that he (the judge) was wrong, then he thought he must saddle him with the costs. Mr. Acton: Very well, sir. I fancy the Grand Order will be very much surprised. At the adjourned sitting of the court on Wednesday, January 25th, Mr. Acton, on behalf of the plaintiffs, stated that the point raised by his Honour had been considered, and he was afraid his Honour's view of the section was irresistible. At the head quarters of the Order this point had taken them entirely by surprise, but they saw no way of getting over his Honour's ruling. The matter was of the utmost importance to them, and they would probably apply to the legislature for a short Act to amend the section quoted. The plaintiffs were nonsuited, with costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 20.

RE AN ARBITRATION BETWEEN GOLLINGS AND THE TRADESMEN'S FRIENDLY SOCIETY, PETERBOROUGH.

QUEEN'S BENCH DIVISION.
Before CAVE AND LAWRANCE, J.J.
1891,
Feb. 19.

Friendly Society—Arbitration—Friendly Societies Act, 1875, 38 & 39 *Vic.*, *cap.* 60, *sec.* 22—*Motion to High Court to set aside award—Jurisdiction of the High Court—Arbitration Act of* 1889, 52 & 53 *Vic.*, *cap.* 49, *sec.* 11, *sub-sec.* 2.

The appellant, a member of a friendly society, having met with an accident, applied to his society for relief. His claim was refused, and under the rules of the society the dispute was referred to arbitrators, who decided against him.

Held, on appeal, that the High Court had no jurisdiction to interfere in the matter.

This was a motion on behalf of a member of a friendly society to set aside an award of arbitrators, made under the rules of the society.

The appellant became a member of the Peterborough Tradesmen's Friendly Society in 1875, and in June, 1890, he was disabled owing to an accident.

He applied to the society for relief, but the latter decided he was not entitled to any, and, under the rules of the said society, referred the dispute to arbitrators, who refused his claim, holding that he was not entitled to sick pay.

From this decision the plaintiff now appealed to the High Court.

Mr. Marchant, for the respondent society, took the preliminary objection that the court had no jurisdiction to entertain the present motion. Under section 22 of the Friendly Societies Act, 38 & 39 Vic., c. 60, the appellant's proper remedy, if he was entitled to any relief, was to apply to the County Court. This Act directs that every dispute between a member or person claiming through a member or under the rules of a registered society, which was the case with the society in the present instance, and the society or an officer thereof, shall be decided in the manner directed by the rules of the society, and the decision so made shall be binding and conclusive on all parties without appeal, and shall not be removable into any court of law or restrainable by injunction. The section then goes on to say that the application for the enforcement of such decision "may be made to the County Court." And again, the remedy is still further clearly pointed out by this section where it provides that, where the rules of the society contain no direction as to disputes, or where no decision is made on a dispute within forty days after an application has been made to the society for a reference under its rules, "the member or person aggrieved may apply either to the County Court or to a Court of Summary Jurisdiction, which may hear and determine the matter in dispute." This Act clearly shows to which court the appellant should have gone to seek relief. Further, that the

High Court has no jurisdiction to alter the award unless such award was wrong upon the face of it, or unless it was shown to have been improperly obtained. In the present case there was a parol submission, and that being so, it could not be made a rule of court. Prior to the Arbitration Act of 1889, 52 & 53 Vic., c. 49, unless the submission had been made a rule of court, application could not have been made to the High Court, because it is clear that, apart from this Act, the court has no jurisdiction to hear such an appeal. The Act of 1889, however, does not give the court any such fresh jurisdiction. Section 11, sub-section 2, of that Act only says the court may set the award aside, "where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured." But that Act does not give the court any jurisdiction which it did not possess before such Act was passed. [Cave, J. : The Act of 1889 does not give the court any fresh jurisdiction in these cases.] The court has no jurisdiction to hear this appeal, and the motion should be dismissed.

Mr. Vesey Fitzgerald (for the appellant) : The award is bad on the face of it, and the appeal is therefore properly made to the High Court under section 11, sub-section 2, of the Act of 1889. The award has been "improperly procured," because it is not, in accordance with the rules of the society, the unanimous award of the arbitrators. Even if this be not so, and the court derives no special jurisdiction under section 11, yet the court has a general inherent jurisdiction to hear this appeal, and is the only and the proper tribunal to which such an application can be made. Section 22 of the Friendly Societies Act, 1875, provides only for the enforcement of the arbitrator's award by the County Court ; it does not give that court power to set aside an award. The appellant is thus compelled to seek his relief in the High Court, and relies upon its inherent jurisdiction.

Cave, J. : I think the preliminary objection taken by the learned counsel for the respondents must be upheld, and this application must be refused with costs on the ground that we have no jurisdiction to interfere in this matter. The award is either good or not ; if good, then it cannot be upset ; if bad, it is a nullity, and the aggrieved party may apply to the County Court. But we have no jurisdiction to hear such an application.

Lawrance, J. : I am of the same opinion.

Motion dismissed accordingly with costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 21.

IN CHANCERY. 1855.

ARMITAGE *v.* WALKER.

Benefit Building Society — Jurisdiction — Objects — Withdrawing Members—Arbitration—Award—New Rules.

In any proceedings at law or in equity respecting a benefit building society, the primary consideration for the court is that the legislature has provided a cheap and summary mode of settling any question

concerning their affairs by arbitration, with the intention carefully to provide that these societies should not be subjected to expensive litigation. The object of these societies is to raise a fund by means of which the members may be enabled to purchase land or houses. The mode by which this is to be done is by investing the subscribed moneys upon very advantageous terms under powers given them by statute. Where the rules of such a society authorised the directors to invest the funds on mortgages for 10 years at any rate of interest, or in building on or improving land mortgaged to them, and authorised members to withdraw their shares upon giving a certain notice, and provided that such members should not be liable to any future fines, but should be entitled to receive the net amount of their subscriptions paid with interest, and also a share of profits, but no time was specified for making such payments; and the directors had power to pay such claims in the order in which they arose, the amount payable to a withdrawing member having been referred to arbitration. *Held* that it was competent to the arbitrator to consider when, consistently with the due prosecution of the other objects of the society, such payment should be made, and to fix a time for such payment accordingly. *Held*, also, that a court of equity had no jurisdiction to alter the award, unless there was error upon the face of it, or it was shown to have been corruptly obtained.

Therefore, where a principal sum and interest only were awarded, the court would not calculate whether the amounts were correct according to the rules, or whether the principal sum included profits or not. The award directed a sum to be paid for costs, which the arbitrator had no power to do, except by a rule made after a member had given notice to withdraw. *Held* that this part of the award was bad, but being separable, it did not vitiate the rest.

QUEEN'S BENCH DIVISION, DUBLIN, 1891. *November* 17, *Before* GIBSON, J. HARRISON, J. AND O'BRIEN, J.

CASE 22.

THE QUEEN (DUANE) *v.* THE JUSTICES OF DUBLIN.

Friendly Societies Act, 1875, 38 & 39 *Vic.*, *cap.* 60, *sec.* 22—*Disputes—Rules—Power to Arbitrate—Claim for Funeral Money—Jurisdiction of Magistrates.*

This was a motion to make absolute a conditional order for a *certiorari* to bring up and quash an order of Mr. Keys, Q.C., awarding £10 and £1 costs against the Ancient Order of Foresters' Society for mortality money due to Michael Maguire, a member of the society, upon the death of his wife, Annie Maguire. The application was made by the Executive Council of the Order.

Mr. Constantine Molloy, Q.C., and Mr. J. E. Condon (on behalf of the Executive Council of the Order) applied to make absolute the conditional order. Under the Act 38 & 39 Vic., c. 60, s. 22, where the rules of the society provide a mode of adjustment of the claims of members the jurisdiction of the justices is ousted.

The 7th section of the society's rules, No. 12, provides—

". . . and the said committee shall decide all disputes, charges, complaints, or claims by a member, or person claiming on account of a member, subject to further appeal by either party to the arbitration of the Dublin District, and after that to the final arbitrators, as provided for in the 88th and 90th General Laws. The decision of the final arbitrators shall be binding and conclusive upon all parties without further appeal, and is not removable into any court of law or restrainable by injunction; and application for the enforcement thereof may be made to the County Court, pursuant to section 22 of the Friendly Societies Act, 1875. . . ."

The case is not within section 30 of the Friendly Societies Act, 1875, as no contributions are received at a greater distance than ten miles from the registered office. All the contributions are payable at the court meetings which are held at the registered office of the society, in the city of Dublin, under rule 13, section 7.

Mr. E. H. Ennis, *contra*. The fact that this money was due is not and was not denied, and, therefore, there is no "dispute" within the meaning of the 22nd section of the 38 & 39 Vic., c. 60. Counsel referred to *Re* the United Patriots' National Benefit Society *v.* Holt, 4 Q.B., Div. 29. Gallaghan's case, 2 Law Reports, Com. Pleas. In *re* Golding's Arbitration, 64 Law Times, new series, 775.

Mr. J. E. Condon, in reply, referred to the several cases before cited, and called attention to the rule of the society that the contributions were payable at the court meetings.

Harrison, J. . I am of opinion that the conditional order should be made absolute on the ground that the 22nd section of the Statute 38 & 39 Vic., c. 60, applies to the matters which were in controversy before the magistrates.

By section 22 of that Act it is provided that every dispute between "a member . . . . and the society or an officer thereof . . . shall be decided in manner directed by the rules of the society, and the decision so made shall be binding and conclusive upon all parties without appeal, and shall not be removable into any court of law or restrainable by injunction, and application for the enforcement thereof may be made to the County Court." Now, in the present case, the rules of this society do provide for a settlement of all disputes. (His lordship read rule 12, section 7, of the society's rules and continued) and, therefore, there was no jurisdiction in the magistrates to adjudicate in the matter. Nor can it be contended that this case is exemplified from the 22nd section (to which I have referred) by the operation of the 30th section of the same Act, inasmuch as no contributions to this society were collected at a distance of ten miles from the central office. As Mr. Condon pointed out, all payments of contributions are required to be made to the secretary at a meeting of the society under the 7th section of rule 13. Therefore the conditional order must be made absolute, but as there seems to have been a practice before the divisional magistrates to adjudicate upon these cases, our order is that each party shall abide his own costs.

O'Brien and Gibson, J.J., concurred.

See Friendly Societies Act, 1896, 59 & 60, *Vic.*, *cap.* 25, *sec.* 68.

CASE 23.

COURT OF QUEEN'S BENCH. 1861. *Jan.* 31.

IN *RE* MACQUEEN AND THE NOTTINGHAM CALEDONIAN SOCIETY.

It is competent to arbitrators under the Friendly Societies Act to decline to hear counsel.

Semble, that all arbitrators have the like discretion.

A dispute between a member of a friendly society called The Nottingham Caledonian Society and the managing members thereof, respecting a claim on the sick fund, was, pursuant to the rules of the society, referred to three arbitrators. The claimant attended by counsel, but the arbitrators, though they expressed themselves willing to hear a speech, refused to allow the counsel to cross-examine the witnesses, whereupon the claimant withdrew, and the award was made in his absence, negativing his claim.

The claimant then applied to the judge of the Nottingham County Court to set aside the award, but the judge refused to entertain the matter, saying he had no jurisdiction.

Mr. Yeatman now moved for a mandamus to compel the County Court Judge to hear the application. He referred to the 18 & 19 Vic., c. 63, s. 40, and submitted that the award was bad on the face of it, and therefore not binding.

Erle, C.J., in giving judgment said: This is an application for a rule in the nature of a mandamus to the judge of the County Court of Nottingham, to hear a dispute between a member of a friendly society and the managing body; and the ground for the application is, that the arbitrators have failed to determine the matter in dispute between the parties. The rules of the society contain a provision for the settlement of disputes by arbitration, and the 40th section of the 18 & 19 Vic., c. 63, enacts that where the rules provide for the determination of disputes by arbitration, the decision of the arbitrator shall be binding and conclusive on all parties, without appeal. A disputed claim having been referred, in accordance with the rules, the parties appeared before the arbitrators, and they have made an award. The claimant now insists that the decision of the arbitrators is void because they declined to allow him to be represented by counsel at the hearing, this, as it is contended, being such misconduct as to render the whole proceeding a nullity. There is nothing in the affidavit to raise a suspicion of partiality, the only charge is, that the arbitrators in their discretion thought fit to decide that the claimant had no *right* to introduce counsel. Mr. Yeatman puts it on the ground that it was an unfair exercise of discretion on the part of the arbitrators to refuse to allow the party the assistance of counsel; and he contends that the interests of justice require that the parties upon such an arbitration as this should be heard by counsel. I am of opinion that the argument fails. I am not aware of any authority for it, and none has been cited. As far as the interests of justice are concerned I can foresee that there might be great failure of justice if counsel were allowed to interfere in all cases. The intention

of the legislature is plainly expressed, that disputes of this sort should be terminated speedily and finally; and, so far from the interests of justice being advanced by hearing counsel, I am inclined to think it would be allowing an unfair advantage if counsel were heard for the complainant, and imposing a hardship on the trustees if they were called upon to pay counsel out of the funds of the society, and might make the decision of the arbitrators to depend rather upon the relative merits of the counsel than upon the intrinsic merits of the case. Parke, J., in Collier *v.* Hicks, lays down in wide terms, that, in the absence of antient usage to the contrary, every tribunal has a discretion as to who shall be permitted to appear as advocates before it. And I see the same point substantially came under the consideration of this court in Tillam *v.* Copp, 5 C.B. 211, where the court refused to set aside the award, on the ground that the arbitrator had declined to permit a stranger to be present for the purpose of assisting the defendant's attorney with practical hints for the conduct of the defence, — holding that an arbitrator has a general discretion as to the mode of conducting the inquiry before him. Maule, J., in that case observes,—"It is a very proper, and in some cases a very indispensable thing that arbitrators should, within proper limits, be allowed to deviate from the ordinary rules which govern courts of justice; for instance, an arbitrator may properly and conveniently take the examination of a sick or infirm person at his own house. It is, therefore, evidently quite fallacious to say that any suspicion of misconduct is to fix upon an arbitrator because he has thought fit to depart from the ordinary course in conducting the proceeding before him." I am of opinion that the authorities as well as the reason of the thing are opposed to this application.

Williams, J.: I am entirely of the same opinion. In point of law, I think an arbitrator has a right to refuse to hear counsel, in his discretion. At the same time, there are undoubtedly many cases where an arbitrator who is anxious to do his duty impartially would be wrong in refusing a party the privilege of appearing by counsel. But, on this occasion, it is manifest that the arbitrator has exercised a sound discretion. Without, therefore, saying as a general rule that an arbitrator may decline to hear counsel, it is enough to say that in the particular case the refusal was justified.

The rest of the court concurring.

Rule refused.

CASE 24.

STONE AND WIFE *v.* THE LIVERPOOL MARINE SOCIETY.

QUEEN'S BENCH DIVISION. 1894. *Feb.* 8.

Friendly Society—Disputes between the Society and its Members—Arbitration—Friendly Societies Act, 1875, 38 & 39 *Vic.*, *cap.* 60, *sec.* 22.

The rules of a friendly society, following the terms of section 22 of the Friendly Societies Act, 1875, provided for the appointment of an

arbitrator, and for the reference of disputes between the society and its members to arbitration. *Held* that a claim raising a question as to whether the second wife of an enrolled member was entitled to enrolment and to the benefits of the society, and a claim for injunction arising upon a suggestion that the society was about to dispose of its funds otherwise than for the benefit of its members, were both disputes within the arbitration rule and the provisions of section 22, and were not the subject of an action in the High Court.

CASE 25.

CREWE COUNTY COURT.
1893.
June 17.

CRITCHLOW *v.* BELLIS.

Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap.* 60) *sec.* 22—*Claim for Sick Pay and Funeral Money—False Declaration as to age—Award upheld.*

At Crewe, his Honour Judge Hughes, Q.C., had before him a claim by William Critchlow against Thomas Bellis, secretary to the Court Prince of Peace Lodge of Foresters, for £32 12s. being £8 due to the plaintiff on the death of his wife, and the balance for sick pay for himself.—Mr. W. Chester was for plaintiff, and Mr. Whittingham for the defendant.—The evidence showed that the plaintiff, who was an engine driver on the North British Railway, joined the lodge about fifteen years ago, and had regularly paid his subscription. When he entered, his age was recorded as thirty-four, but from something that happened last year the lodge required him to produce his certificate of birth, when it was found that instead of being thirty-four at the time he entered, he was thirty-nine. On May 14th, last year, the plaintiff met with an accident at his work on his engine, and was for a long time an inmate of the Royal Infirmary, Glasgow. During the time he was laid up there, a doctor wrote to the society to inform them of the accident, but the secretary replied that before the lodge had any notice of the accident, they had suspended plaintiff on account of his not having forwarded the certificate of birth, which he had been repeatedly requested to do. When the certificate was forwarded and the proper age ascertained he was expelled. Leave was given him to appeal to the arbitrators of the society, and an arbitration was held on a date fixed by the plaintiff himself, but he was not present, being, it was stated, then too unwell to leave the infirmary. The case was, however, dealt with, and the decision was against the plaintiff's claim. The plaintiff denied that he gave a wrong age at all. When he joined the lodge he was asked by the then secretary what his age was, and he replied that he did not know. The secretary said he appeared to be about thirty-four, and entered him at that age.—Mr. Chester argued that the society, having accepted the plaintiff's subscription all these years, had undertaken the usual obligation.—Mr. Whittingham said the rules provided that a member giving a false age should be expelled. They were exceedingly sorry for the plaintiff's accident; but his case had gone before the arbitrators who had decided against him. Mr. Whittingham said that the plaintiff had had more out of the society than he had paid in. In the claim for the death of his wife the plaintiff said he had paid the

subscription. The secretary, however, said that there was no record of the plaintiff's wife in the books, nor had any fee been received.—The judge said he was satisfied that the case had gone before the arbitrators of the society. The plaintiff had had due notice of the arbitration, and the arbitrators had settled the case. He gave judgment for the defendant with costs.

CASE 26.

COURT OF QUEEN'S BENCH. 1854. WEDNESDAY, *Jan.* 25.

THE QUEEN AGAINST EVANS.

Arbitration—Expelled Member—Award upheld.

The rules of a benefit society, established, enrolled and certified under Statutes 10 Geo. IV., c. 56, 4 & 5 Wm. IV., c. 40, and 9 & 10 Vic., c. 27, provided that if any misunderstanding should happen between the society and any of its members, the matter should be submitted to the decision of arbitrators according to Statute 10 Geo. IV., c. 56, nine of whom should be elected in the first quarterly meeting after the passing of the said laws, and that, when any dispute should arise, the names of the arbitrators should be shuffled in a box or glass, and the first five names taken up by the complaining party should be the arbitrators for the question at issue, and their decision should be final. The society at their first quarterly meeting, appointed a general committee for the purpose of electing arbitrators, and nine arbitrators were shortly afterwards elected. Afterwards, in consequence of some of them having left the neighbourhood, and of others having refused to act if called on, the general committee elected nine new arbitrators in place of the first set. After the first election, but before the second, D., a member of the society was expelled for an infringement of one of the rules, as directed by the rule itself. He applied, after the second election of arbitrators, to have the question of his expulsion referred to arbitration. The society appointed a day for that purpose, and D. and six of the arbitrators last elected attended. D. refused to draw five names out of the nine, according to the rule, and he eventually with the consent of the society, signed an agreement, submitting to five of the six arbitrators then present (he having been previously allowed, on his own request, to reject any one of the six he chose), their decision to be final. The five arbitrators made their award, adjudging him to be properly expelled. D. applied for a re-hearing which was granted; but upon the meeting for re-hearing, D. refused to select his arbitrators according to the rule, and he subsequently made a complaint before justices under Statute 4 & 5 Wm. IV., c. 40, ss. 7, 8; and the justices made an order requiring the society to reinstate him or to pay him £50.

Held that the justices had no jurisdiction to make such order, there having been no neglect or refusal by the arbitrators to make an award, and it not being open to D. to contend that the application for settlement by arbitration had not been complied with in forty days, he being estopped, by the written agreement, from disputing the validity of the appointment of the arbitrators.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 27.

COURT OF QUEEN'S BENCH. 1869. *May* 6.

CALLAGHAN, APPELLANT; DOLWIN, RESPONDENT.

Friendly Society—Construction of Rules—Finality of Decision of Arbitrators or Justices—Appeal under 20 & 21 *Vic., cap.* 43.

No appeal lies against the decision of a magistrate under section 5 of the Friendly Societies Act, 21 & 22 Vic., c. 101, notwithstanding the general words of 20 & 21 Vic., c. 43, s. 2, that, "after the hearing and determination by a justice or justices of any information or complaint which he or they have power to determine in a summary way by any law now in force *or hereafter to be made*," either party if dissatisfied with the decision may demand a case for the opinion of a superior court, the persons selected by the rules of the society to settle all disputes between the society and its members being, whether justices or other referees, to be regarded as arbitrators, whose decision is to be final and conclusive.

Regina *v.* Lamborde (Law Rep. 1 Q.B. 388), overruled.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 68.

CASE 28.

QUEEN'S BENCH DIVISION. A. L. SMITH & GRANTHAM, J.J. 1887, *March* 22.

THE QUEEN *v.* THE JUDGE OF THE SHROPSHIRE COUNTY COURT—IN THE MATTER OF THOMAS AND OTHERS.

Benefit Burial Society—Meeting of Society not held within 40 days to adjudicate upon claim—Right of claimant to proceed against society in County Court.

This was an attempt on the part of a benefit burial society to avoid a decision of the County Court against them, on a plaint by a Widow to recover the sum of £10 as the allowance due to her for her husband's funeral within seven days of her husband's death in January. She sent in her claim, which they disputed, and, after much delay, in May they sent her their grounds for disputing it. In July she pressed her claim, and said if it were not acceded to she should resort to the County Court. Not until the 26th August did they hold a meeting, which finally negatived her claim. By the rules they should have held a meeting within 40 days to have adjudicated upon her claim. She went to the County Court, and the judge declined to adjudicate, thinking that she ought to have resorted to a reference to arbitration under the Act, 37 & 38 Vic., c. 60.

This was an application for a mandamus to compel the County Court judge to hear her case.

Mr. Marshall appeared for the society.

Mr. English Harrison for the widow.

The court came to the conclusion that as she had made her claim in proper time, and the society had not held their meeting to decide on it

within the 40 days allowed by the rules they were in default; and that she, therefore, had a right to resort to the County Court, for justice; that the judge had jurisdiction and ought to have exercised it; and that, therefore, there must be a mandamus, the society paying the costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 68.

CASE 29.

COURT OF APPEAL.

1893. Oct. 31.

BACHE, APPELLANT; BILLINGHAM, RESPONDENT.

Friendly Society—Dispute—Arbitration—Misconduct of Arbitrators—Decision of Arbitrators—Jurisdiction of Justices where no Decision—Friendly Societies Act, 1875, (38 & 39 *Vic., cap.* 60,) *sec.* 22.

In an arbitration between a member of a friendly society and the society, arising out of a claim for sick pay, the arbitrators appointed under the rules of the society, after hearing the claimant, heard the evidence of two witnesses, in the absence of the claimant, who was excluded from the room and given no opportunity of cross-examining the witnesses. By one of the rules of the society, "where no decision is made on a dispute within forty days after application for reference to arbitration, the member may apply to a court of summary jurisdiction." The member applied to justices, who decided that, the arbitration having been improperly conducted, the decision of the arbitrators was void, and that consequently the justices had jurisdiction to hear and determine the dispute. On appeal on a special case stated by the justices:

Held (reversing the judgment of the Queen's Bench Division) that as the arbitrators had given a decision which was valid until set aside, the jurisdiction of the justices to hear the complaint did not arise.

Regina *v.* Grant (14 Q. B. 43) distinguished.

Appeal from a decision of the Queen's Bench Division on a special case stated by justices. A complaint was preferred by the respondent Billingham against the appellant Bache, as secretary of Court Foresters' Home, No. 4196 Branch of the Dudley and Cradley Heath District of the Ancient Order of Foresters Friendly Society, that the respondent, being a member and being disabled from work, was in accordance with the rules of the society entitled to 10s. per week sick pay, and that there was due to him £5 10s.

On the hearing it was proved that the complainant was a member of the society and that he had met with an accident that incapacitated him from work.

By the rules it appeared that one of the objects was the payment of sick pay to members, and the rules contained provisions for the appointment of arbitrators and the reference of all disputes to them.

Objection was made on behalf of the appellant to the jurisdiction of the justices to hear the complaint, on the ground that the matter in dispute had been referred to and determined by arbitrators under the rules. On behalf of the respondent, it was said that he was not bound by the decision of the arbitrators, in consequence of the manner in which the arbitration had taken place. The paragraph of the special case which related to the conduct of the arbitration was as follows:— "In consequence of this notice (a forty days notice by the respondent that he would take legal proceedings) the court summoned the respondent to a meeting of the Arbitration Committee on the 28th day of October, 1892, and the respondent duly attended. It was proved in evidence that, after hearing the respondent's statement, two witnesses were called on behalf of the court, and against the respondent, and were examined before the Arbitration Committee in the absence of the respondent, who was purposely excluded from the room during the time their statements were taken, and had no opportunity of cross-examining them, or of replying to their statements, and that the Arbitration Committee at once adjudicated upon the matter, and omitted to acquaint the respondent with the nature of the evidence given against him, and, before calling him into the room, decided that he was not entitled to the sick-pay claimed by him.

The justices decided that the arbitration had been improperly conducted, and was void and of no effect, and that by virtue of section 22 (*d*) of the Friendly Societies Act, 1875, (1) they had jurisdiction to hear and determine the dispute, and that the respondent was entitled to the amount he claimed. Against this decision the appellant appealed to the Queen's Bench Division, and the court (Pollock, B., and Kennedy, J.) gave judgment, on the authority of Regina *v.* Grant, upholding the decision of the justices.

The appellant appealed.

Mr. A. T. Lawrence for the appellant, and Mr. Johnstone Watson for the respondents.

Lord Esher, M. R.: I cannot agree with the judgment of the Divisional Court in this case. It seems to me that what happened was, that Billingham had a claim against the society which was referred under the rules to the committee, who were to enter upon an arbitration and to decide the matter. In so doing they were arbitrators, and if they made a mistake either in law or in fact the courts cannot interfere with them. There is given by the rules an appeal to other branches of the society; but there is no appeal to the court against a wrong decision of arbitrators chosen by the parties themselves. Billingham then had a decision against him by the arbitrators to whom he had agreed to refer the matter of his complaint, and he asked the justices to hear the case again. Why? Not because the committee had not decided, but because they had decided improperly, that is to say, that they heard him, but then they examined witnesses against him when he was not present, and did not give him the opportunity of cross-examining those witnesses. That is a wrong procedure in the arbitration; but nevertheless they did that in order to

come to a decision, and they came to a decision." When he went before the magistrates he could not properly say that there had been no decision by the arbitrators. He could only say that they had not decided according to law and justice. That does not make the decision void. It only gives ground for a court to set it aside or for an appeal. It is said now that the court could not set aside such an award. So much the worse for Billingham if they could not, because the only remedy then is by way of appeal, and that is not to the magistrates; it is to other arbitrators of the society. It does not seem to me necessary to determine in this case whether the court could set aside the award. If they could, no application has been made to them to do it, and until that has been done there is an award good and valid. But then the Divisional Court have treated the matter as a case within the judgment in Regina *v.* Grant. I think the court misconstrued the decision in that case, for the jurisdiction of the arbitrators there depended upon a condition precedent which must have existed before they could enter upon the arbitration so as to decide. The justices were therefore right in inquiring into those preceding facts in order to determine whether they existed so as to give them jurisdiction or not. That is not the case here. There was no such preliminary fact to be inquired into. The only facts necessary to exist in this case were that there should be a dispute between Billingham and the society, and that did exist, and the magistrates could not decide that it did not. I think the learned judges in the court below have mistaken the application of that case, that this case is within the other cases cited, and that therefore the magistrates had no jurisdiction at all to inquire into the matter. I think we must differ from the Divisional Court and allow the appeal.

Lopes, L. J.: I, too, am of opinion that the decision of the court below was wrong. The question raised in the case was whether the magistrates had jurisdiction to hear the complaint. That depends upon section 22 of the Act of 1875. That section provides for disputes and how they are to be dealt with, whether those disputes are between members or branches of the society, and sub-section (*d*) is in these words: "Where the rules contain no direction as to disputes, or where no decision is made"—these are the material words—"on a dispute, within forty days after application to the society for a reference under its rules, the member or person aggrieved may apply either to the County Court or to a court of summary jurisdiction"—that is, the justices—"which may hear and determine the matter in dispute." Applying that rule to the present case, there would be no jurisdiction in the justices in this case unless there was no decision made by the arbitrators. Now, was there a decision made by the arbitrators? I think there was. They clearly decided the case, but it is said that they decided it improperly in not giving Billingham an opportunity of cross-examining the witnesses, who were examined behind his back. If this were an ordinary arbitration, I take it that it would be good ground for applying to the court to set it aside upon the ground of the misconduct of the arbitrators; but, if an action had been brought upon that award, it would not have been a good plea to have said there was no award. The objection could not have been taken in answer to an action upon the award, but only on an application to set it aside. The case of Thorburn *v.* Barnes and other cases make that clear. It is said here that course could not have been taken with regard to the award, because there is a provision that the award is not to be removable into any court. I do not know how that may be; but if so, as the Master of the Rolls says, all the worse for

Billingham ; because that is a thing which he is not in a position to take advantage of. The real point is, was there a decision by the arbitrators? I am clearly of opinion there was. They decided the matter brought before them, and the jurisdiction of the magistrates was ousted. The court below seem to have proceeded upon a case of Regina *v.* Grant. I think they have mistaken the effect of that case. In that case the magistrates came to the conclusion, and I think very rightly, that there was no decision ; because there, there was a condition precedent that the arbitrators, before arriving at a decision, should hear evidence on both sides ; and it was clear to the magistrates that that course had not been adopted, and therefore the condition precedent, upon which the decision was to go, was not observed, and the magistrates were justified in saying there was no decision, and that their jurisdiction arose. I think, therefore, that this appeal should be allowed.

Kay, L. J. : With all deference to the learned judges in the court below, I agree in what has been said by the Master of the Rolls, and my brother Lopes. Section 22 of the 38 & 39 Vic. c. 60, seems to be copied into the rules of this society, for the 20th rule, which relates to arbitration, ends thus: "Where no decision is made on a dispute within forty days after application for reference to arbitration, the member or person aggrieved may apply to the County Court or to a court of summary jurisdiction under the Act." Now the respondent has applied to the court of summary jurisdiction ; and, of course, he was bound to make out there was no decision. The justices seem to have come to the conclusion there was no decision of the arbitrators, because they conceived that the arbitrators had misconducted themselves ; but the law is plain, that the misconduct of the arbitrators, in making an award without hearing the defendant or his witnesses, does not make the award absolutely invalid, so that in an action upon the award, it could be pleaded that there is no such award ; it is only a ground for setting the award aside. The case to which I refer upon that subject, is Braddick *v.* Thompson, and there are many other cases to the same effect. There was, therefore, a decision of the arbitrators that might or might not have been impeached, but there was no possibility of appealing to the summary jurisdiction of the justices while that decision stood. I think that it is probable that the learned judges in the court below would have come to that conclusion if they had not been impressed with the view that it was inconsistent with Regina *v.* Grant ; but at p. 63 of the report, the ground of that decision is stated in these words : Statute 10 Geo. IV., c. 56, s. 27, enacts that an award made according to the true purport and meaning of the rules of the society shall be final and binding. The rule of the society in question, relating to arbitrators, declares that the arbitrators shall hear evidence on both sides, and their decision binding to all parties shall be final. Upon this statement there is good reason for saying that arbitrators who refused to hear the evidence of one side did not make an award according to the true meaning of the rules of the society, and, therefore, did not make an award final and binding within the terms and intention of Statute 10 Geo. IV., c. 56, s. 27. Statute 4 & 5 Wm. IV., c. 40, s. 7, giving jurisdiction to the justices in case of the neglect or refusal of the arbitrators to make an award, recites Statute 10 Geo. IV., c. 56, s. 27, and intends an award final and binding within the meaning of that statute. It seems to follow that the justices have jurisdiction where the award is not in this sense final and binding. The rule here is entirely different,

and the statute is differently worded. Here is an award which is *prima facie* valid, and can only be rendered invalid if an application should be made (perhaps it cannot be made), to set it aside, and it is set aside. Until that is done the award is a decision, and the jurisdiction of the justices never arose. I therefore think this appeal must be allowed.

Appeal allowed.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 30.

COURT OF QUEEN'S BENCH.

1863. *Nov.* 28.

HILTON *v.* HILL.

Service of Notice by Post not sufficient unless expressly stated in the rules.

A rule of a Benefit Building Society provided that all summonses, circulars, and notices, should be deemed duly served by putting the same into the post addressed to the members, according to the last entry on the register given by them for this purpose.

Held that this rule only related to the ordinary business of the society, and did not apply to the case of notices of appointment by arbitrators for the purpose of proceeding with a reference.

CASE 31.

QUEEN'S BENCH DIVISION.

1892. *Dec.* 11.

BAKER *v.* YORKSHIRE FIRE AND LIFE ASSURANCE COMPANY.

Practice—Staying Proceedings—Arbitration—Submission—Fire Insurance—Policy—Arbitration Act, 1889 (52 & 53 *Vic.*, *cap.* 49), *secs.* 4, 27.

By section 27 of the Arbitration Act, 1889, "submission" means a "written agreement" to submit present or future differences to arbitration, and by section 4 power is given to stay any legal proceedings commenced by any party to the submission against any other party thereto.

An action on a fire insurance policy having been stayed on the ground that the policy contained a clause that any differences arising under it should be referred to arbitration.

Held that the policy, although not signed by the plaintiff, amounted to a submission to arbitration within the meaning of sections 4 & 27 of the Arbitration Act, 1889, and that the action, therefore, was rightly stayed.

Appeal from an order of Charles, J., at Chambers, staying the action under section 4 of the Arbitration Act, 1889.

The action was brought upon a fire insurance policy issued by the defendants to recover the value of goods, &c., destroyed by fire. The

policy contained a clause that any difference arising between the company and any claimant under the policy should be referred to arbitration. A dispute having arisen as to the amount and value of goods destroyed in the fire, this action was brought, whereupon the defendants took out a summons to stay the proceedings, and from the order made in that summons this appeal was brought by the plaintiff.

Mr. Bailhache for plaintiff; Mr. T. Willes Chitty for the defendants.

Lord Coleridge, C.J., in giving judgment said: I am of opinion that this appeal must be dismissed. The action is brought upon a fire insurance policy, containing the usual provision for a reference to arbitration of all disputes arising under the policy, and circumstances have arisen which have resulted in differences between the plaintiff and the defendants as to the amount payable to the plaintiff in respect of the destruction by fire of some of the insured property. The plaintiff sues on the policy, and by so suing affirms it to be his contract; he cannot disaffirm a part of the very contract on which he is suing. He contends that in order to bring into operation the arbitration clause contained in the policy, the policy must be signed by both parties; but the Act of Parliament says nothing of the kind, and the only apparent justification for the contention is to be found in Caerleon Tinplate Co. *v.* Hughes. That decision must be interpreted, however, with regard to the particular facts of that case. There was there no complete contract; the two documents constituting the contract differed materially in their terms, and the court said it was plain that the parties never were *ad idem*. That being the state of facts, it was obviously impossible to allow an arbitration to be forced on an unwilling party. The present case is absolutely different; for there is here a perfectly good contract, one of the terms of which was that disputes arising under it should be referred to arbitration; the plaintiff has not complied with that term, and his action must be stayed. It is further said by the plaintiff, that though the policy is admittedly a good contract, there must be a written submission to arbitration, signed by the plaintiff. I do not agree with that contention, and even if I did I should stay the action until the plaintiff signed a submission.

A. L. Smith, J.: I am of the same opinion. It is an entirely novel point that is being taken by the plaintiff. The provisions of section 11 of the Common Law Procedure Act, 1854, are well known and have been acted on for many years, and have recently been practically re-enacted in the Arbitration Act, 1889. Under the former Act many hundreds of cases of claims on fire insurance policies must have been referred under the power to stay an action given to the "parties to any deed or instrument in writing." In the present Act the first three sections deal with the submission, and section 4, after commencing with the words "If any party to a submission," proceeds in language practically the same as that used in the Common Law Procedure Act. It is said, however, that by the interpretation clause a submission must be a written agreement to refer disputes to arbitration. This, however, is not a higher interpretation than was necessarily put on the language of the old Act, under which it was the universal practice to refer these cases, and does not mean that in all cases the written agreement to refer must be signed by both parties. It is quite unnecessary to say more as to the decision in Caerleon Tinplate Co. *v.* Hughes than that it turned entirely upon the peculiar facts of the case; for I am convinced that the learned judges who gave that decision would decide the present case in the same way that we are deciding it. My brother Charles at Chambers was quite right, and his decision must be upheld. Appeal dismissed.

CASE 32.

QUEEN'S BENCH DIVISION. 1875. *May* 24.

PRENTICE *v.* LONDON, LONGHURST, AND OTHERS.

Benefit Building Society—Arbitration clause—6 & 7 *Wm. IV., cap.* 32, *sec.* 4—10 *Geo. IV., cap.* 56, *sec.* 27—18 & 19 *Vic., cap.* 63, *sec.* 40.

To bring a dispute within the arbitration clause of the rules of a benefit building society, it must be one which arises between the trustees and the party claiming *as a member of the society.*

The plaintiff was a transferee for value of shares in a benefit building society. The transferor had been the secretary of the society, and in that capacity had incurred liabilities to the trustees to a considerable amount. The latter, after the transfer, but before they had notice of it, passed a resolution to forfeit the shares of the transferor, and appropriated their value towards the deficit. The plaintiff sued the trustees for refusing to admit him to the benefits to which he claimed to be entitled as a member of the society and as the holder of shares therein. The defendants pleaded that the cause of action was "a dispute between the defendants as trustees, and the transferor as a member, and the plaintiff as a person claiming on account of a member of the society, and was a dispute which according to the rules of the society and the statutes ought to be settled by arbitration."

Held that as the trustees denied the right of the plaintiff to be a member of the society, they were estopped from saying that the dispute was a dispute between them and him as a member, within the rule.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 68.

CASE 33.

HIGH COURT OF JUSTICE. QUEEN'S BENCH DIVISION. DIVISIONAL COURT. 1891. *Jan.* 29. *Before* CAVE, J. AND VAUGHAN WILLIAMS, J.

DIXON *v.* THOMPSON AND OTHERS.

Friendly Society—Sick pay—Rules—Arbitration—Amendment of Rules binding on Members.

A rule of the defendant court provided that the object and rules of the court should be carried into effect in conformity with, and subject to the rules of the District and General Laws of the Order, and that the whole of the rules of the District and General Laws, and any alterations and amendments thereof, made and duly registered, should be applicable to the members of the court in the same manner as if the rules of the District and General Laws were inserted in the rules of the court.

Held that a benefit member was bound by an amendment of the General Laws of the Order, which had the effect of depriving him of all benefit.

This was an appeal from the decision of the County Court Judge at Carlisle, where an application to again enforce an award made by the

District Arbitration Committee was opposed by the Executive Council of the A.O.F., on the ground that the amendment of the court rules had deprived Dixon, the plaintiff, a member of Court Star of the West, of his benefit, and that, consequently, the dispute which had arisen was a new dispute, and should have been referred to the Arbitration Committee of the court, instead of being made the subject of another application to his Honour the Judge to enforce an award made under a rule which did not then exist. The learned County Court Judge upheld this contention, and refused the plaintiff's application, giving him leave to appeal. This he did in the Queen's Bench Division, when Mr. Tatlock appeared on behalf of the society.

Mr. Forbes : My lords, this case turns on the construction of the rules of a friendly society.

Mr. Justice Cave : First I want to know what you appeal against ?

Mr. Forbes : I appeal against the decision of the County Court Judge in the case of Dixon *v.* Thompson.

Mr. Justice Cave : What was the order ?

Mr. Forbes : That the appellant must go again to arbitration. The appellant is a member of a friendly society.

Mr. Justice Cave : You appeal against the order of a County Court Judge refusing to entertain his action ?

Mr. Forbes : Yes.

Mr. Justice Cave : On the ground that he was bound to go to arbitration ?

Mr. Forbes : Yes.

Mr. Justice Cave : What was the action for ?

Mr. Forbes : My lord, the appellant is a member of a friendly society.

Mr. Justice Cave : I want to know what the action was for.

Mr. Forbes : The appellant is entitled to certain sick pay.

Mr. Justice Cave : Now let us have the facts.

Mr. Forbes : I will first of all refer your lordship to the notes of the County Court Judge. Your lordship will see that the learned judge there states that the facts were the same :—

> "As in a former action between the same parties in this court, when I gave a verdict for the plaintiff, except that the amount claimed in the present action has accrued since the judgment in the former action." Then this is the statement of the facts that I am now proposing to read to your lordship. "Facts stated and agreed upon by the solicitors to the parties for the decision of the judge, as arranged at the hearing on the 26th day of June, 1889. The plaintiff is a member of the defendant society, and was so at the time of his accident, afterwards referred to. At the time of his admission to the society the following rule was in force (rule 1

of Court Star of the West): 'The whole of the objects and rules of this court shall be carried into effect in conformity with, and subject to, the rules of the before-named district and general laws, and the whole of the said rules of the district and general laws; and any alterations and amendments thereof hereafter made and duly registered, shall be applicable to the members of this court in the same manner as if the said rules of the district and the general laws were inserted in the rules of this court.' The defendant society is registered under the Friendly Societies Acts. The plaintiff was a locomotive stoker in the service of the Glasgow and South Western Railway Company, and on the 20th day of August, 1881, he was injured in its service, and which injury necessitated the amputation of his leg. At this time he was in full compliance with the rules of the society. On the 20th day of August, 1881, the following rule of the defendant society was in force (rule 33, Sick Allowance, section 4), 'Any member who may be afflicted with blindness, or otherwise disabled to prevent him from following his usual employment, shall, for a period not exceeding the first six months . . . . but after that period should he no longer require medical treatment his allowance shall be reduced to two shillings and sixpence per week so long as such affliction may last, and he shall be allowed to follow any employment to assist him in gaining a livelihood.' . . . . The amputation of the plaintiff's leg prevented him from ever 'following his usual employment' as a locomotive stoker. The said sick allowance of two shillings and sixpence per week was paid to the plaintiff up to the 8th day of February, 1888, when further payment was stopped. Against this stoppage the plaintiff appealed to the 'Court Arbitration Committee,' who decided against him. Against this decision he appealed to the 'District Arbitration Committee,' who, on the 19th day of May, 1888, decided in his favour. At the time of the aforesaid decision of the District Arbitration Committee the plaintiff was, and is now, in the service of the Glasgow and South Western Railway Company as a watchman at wages of eighteen shillings per week. After the above decision of the District Arbitration Committee the said allowance of two shillings and sixpence was continued until the 20th day of September, 1888, and it was again discontinued; and it is against this discontinuance that the plaintiff seeks to enforce the decision of the said District Arbitration Committee, under section 22 of 38 & 39 Vic., c. 60. When the said District Arbitration Committee gave their decision, they recommended the above rule be amended. Accordingly the following addition to rule 33, section 4, was duly passed and registered on the 20th day of September, 1888. Rule 33:—The following addition to be made to rule 33, section 4, after the word 'livelihood' in the eighth line. 'But any member who may be receiving sixteen shillings per week shall not be entitled to the aforesaid two shillings and sixpence per week sick allowance.' Before the registration of the aforesaid amendment (20th day of September, 1888), there was nothing in the rules of the court limiting the right of a member who was disabled and unable to follow his 'usual employment' to the aforesaid allowance of two shillings and sixpence per week. The 'General Laws' of the Foresters' Friendly Society, section 49, relate to the making of rules, and by sub-section 3 the rules are not to be altered without the consent of a majority at a special meeting, due notice of which

has to be given; and the new rules are not to be binding until registered. There was nothing in the said 'General Laws, section 49'——"

Mr. Justice Cave: Let me go through that again. Would you mind reading that a-fresh? Beginning "The 'General Laws' of the Foresters' Friendly Society."

Mr. Forbes: "The 'General Laws' of the Foresters' Friendly Society, section 49, relate to the making of the rules, and by sub-section 3 the rules are not to be altered without the consent of a majority at a special meeting, due notice of which has to be given, and the new rules are not to be binding until registered. There was nothing in the said 'General Laws,' section 49, sub-section 3, as the said 'General Laws' existed when the District Arbitration Committee gave their decision in plaintiff's favour, applying such amended rules to members in receipt of benefit at the time such amendment was registered, but at a High Court Meeting held at Reading in August, 1888, section 49, sub-section 3 of the 'General Laws' was altered as follows, namely, after the words 'Under the Friendly Societies Act,' section 3 of law 49 insert the following:— Any amendment of a rule shall apply to all members, whether in the receipt of benefit or not at the time such amendment was registered.' This amendment was registered on the 8th September, 1888."

Mr. Justice Cave: "The plaintiff has not consented to be bound by the aforesaid amendments, except so far as he is bound by rule 1."

Mr. Forbes: My statement is different.

Mr. Justice Cave: Yours is wrong evidently. "The plaintiff has not consented to be bound by the aforesaid amendments except so far as he is bound by rule 1 of the Court Star of the West (before recited), he being bound by this rule as a member of the society." It is obviously so, because rule 1 existed when he joined the society, therefore he cannot contend he is not bound by that.

Mr. Justice Vaughan Williams: Have you a copy of the rules of the society? *(Copies of the rules were handed to their lordships.)*

Mr. Tatlock: If your lordship would not mind looking at the outside you will see it is the one that was in existence when he joined. The one I have marked A is the amended one. One of them shows the amended rule as registered before this action, and the fourth one shows the General Rules of the society up to 1887. The last one is the one containing the amended rule 49. I do not want to interrupt the argument of my learned friend, but that statement is a statement of facts which was made in an intermediate action.

Mr. Justice Cave: That we know.

Mr. Forbes: "The plaintiff contends that he is bound only by the rules as they existed when he joined the society, or, at any rate, when he became entitled to the aforesaid sick allowance of two shillings and sixpence per week, and that the aforesaid amendments are *ultra vires* as against him, having regard to rules 1 and 16 of the Court Star of the West, and to 38 & 39 Vic., c. 60, ss. 13 and 22.

The defendants contend (1) that the plaintiff is bound by the aforesaid amendments on the same being registered; (2) that the plaintiff ought to have taken the decision of the Arbitration Committee on the amended rule before applying to this Honourable Court to enforce the award which was given in the plaintiff's favour before the rule was amended."

My lords, I submit in the first place that as the decision of the Carlisle District Arbitration Committee——

Mr. Justice Cave: You have not finished the judge's statement.

Mr. Forbes: Yes, my lord. I have finished it as far as it goes here.

Mr. Justice Cave: Yes, that statement. But you must go back to the one in which that was inserted—

"The solicitors for the defendants contended in the present action that a new dispute having arisen since the award of the 19th day of May, 1888, referred to in the plaintiff's particulars in this action, I had no jurisdiction until this dispute had been referred to arbitration under the Friendly Societies Act, 1875, and the rules and regulations of the society. I being of opinion that the defendants' contention was right, gave a verdict for defendants and, the defendants not asking for costs, without costs. Thereupon, at the request of plaintiff's solicitor, and considering the matter of public interest, I gave plaintiff leave to appeal."

Now, has not this point been decided very recently—within this week?

Mr. Forbes: Yes, my lord.

Mr. Justice Cave: And decided against you?

Mr. Forbes: Yes, but I submit our case can be distinguished from that case, because there was a special contract in the case reported in the *Times*, Stooke *v.* The Mutual Provident Alliance.

Mr. Justice Cave: Let us see what the case was that was decided, and then let us see how you propose to distinguish it. (A copy of the *Times* was handed to the court.)

Mr. Forbes: My lord, I submit that in this case of the Alliance Company there was a special contract between the members of the society. There was a policy and there was a proposal by which the member bound himself to agree to any alterations made in the contract. But in the present case there is no special contract. There is no such agreement made by the appellant.

Mr. Justice Cave: What do you say to rule 1 of the court?

Mr. Forbes: There is nothing in rule 1 of the society.

Mr. Justice Vaughan Williams: Why, is it not the contract which you have made yourself?

Mr. Forbes : My lords, the rules with regard to the contract stand on a different footing from the other rules. In the rules with regard to the contract the society guarantees to pay certain benefits. The rules with regard to contracts stand on a different footing from the rules with regard to other matters. In the rules with regard to contracts the society binds itself to pay certain sums.

Mr. Justice Cave : A man joins on the terms of the rules.

Mr. Forbes : He joins to obtain certain benefits which are guaranteed.

Mr. Justice Cave : Quite so, and on the terms of the rules ; and one rule is that any alterations and amendments of the district rules and general laws hereafter made, when duly registered, shall be applicable to the members of the court in the same manner as if they had been inserted in the rules of the court.

Mr. Forbes : Yes ; but in this case the appellant has obtained a decision from the tribunal under the rules, which decided in his favour, and decided that he was entitled under the rules to sick pay.

Mr. Justice Cave : But since then the rules have been amended.

Mr. Forbes : Yes ; but that decision has never been reversed in the only way in which it could be reversed.

Mr. Justice Cave : Which decision ?

Mr. Forbes : The decision of the Arbitration Committee.

Mr. Justice Cave : That does not apply. The decision of the Arbitration Committee applied to the point which was then in issue. Since then your position has been altered by the amendment of the rules. Now you are seeking to recover after that. If you say that the decision which was given in your favour has not been altered, the answer to that is that there is a new dispute, arising under different circumstances, and that you have not got the decision of the committee in your favour upon that dispute. If you want to obtain an opinion from us as to whether, if you go before that committee, they ought to decide in your favour, by way of saving time and expense, we shall be ready to express our opinion, as my brother says ; but if you fall back upon the technical point that the decision of the committee was in your favour, the answer to that is that there has since been a new dispute upon which you have not got a decision in your favour.

Mr. Forbes : The dispute is on the same matter, and the rules provide expressly that decisions can only be reversed in the manner therein described, namely, by another Arbitration Committee.

Mr. Justice Cave : Then it is your duty to go and get it. Here has a dispute arisen, which is a fresh one, not the one which was disputed before.

Mr. Forbes : We contend that the amendment does not raise a new dispute between the appellant and the society.

Mr. Justice Cave : It must raise a new dispute between the appellant and the society, because if it does not raise a dispute between the appellant and the society, the County Court Judge has given a judgment

against you in the present case, and you cannot come again. But obviously it is a new dispute, because it is in respect of different weeks. You may have a perfectly good title to receive the two shillings and sixpence a week for the year 1888, and none for the year 1890.

Mr. Forbes: If the appellant is sent back again to arbitration, he will be sent back to the body who has amended this rule. To send him back to arbitration is in effect to deprive him of it.

Mr. Justice Cave: That may be, because it is a new rule, by which certainly he is bound. It has been made, and if he is bound by this new rule which has been made, you are out of court, and he has assented to a rule which says that he is to be bound by all amendments of the rule.

Mr. Forbes: Yes, my lord, there is one point which I wanted to submit, and that is that the authority which has registered this amendment has itself decided, and the Registrar of Friendly Societies has made an award to the effect———

Mr. Justice Cave: What have we to do with that? We are bound to interpret the Act of Parliament and your contracts for ourselves, and we have before us the decision of a co-ordinate court in apparently a similar case.

Mr. Forbes: But, my lords, look at the hardship to the man of sending him back to a body which has recently decided against him, and which has made a rule in order to prevent the carrying out of that contract.

Mr. Justice Cave: Yes, they thought it was rather strong that he should get 18s. a week *plus* 2s. 6d. sick allowance.

Mr. Tatlock: That was precisely the reason.

Mr. Justice Cave: They altered the rule. They had power to alter the rule, and if they have power to alter the rule properly, you are bound by that alteration. Unless you can get yourself out of rule 1 it appears to us that you must submit to these amendments.

Mr. Forbes: If members are to be deprived of their benefits whenever the societies choose to rescind their contracts by amending their rules, their position would be absolutely insecure.

Mr. Justice Cave: Then if that is so, their best plan is not to join the Union. They cannot be relieved from their obligations because in a particular case they find it inconvenient.

Mr. Tatlock: Your lordships ——

Mr. Justice Cave: You need not trouble to address us.

Mr. Tatlock: I thank your lordships.

Their lordships then delivered judgment.

Mr. Justice Cave: The County Court Judge here has decided this case upon a preliminary point—namely, that the present appellant has not pursued the course which he ought to have pursued with reference to the dispute that has arisen over this half-a-crown a week. It seems to me that the learned County Court Judge is right. There is no argument

brought forward why he should not be right. It is said that the appellant has been through this process already and has got a decision of the District Committee, or General Committee—I do not know which—in his favour. That may be. No doubt that was so. But then this present dispute is not the same as the dispute in which he got an award in his favour. After that award was made in his favour the rules were amended, and if he were to go now before the committee, he would have to bring before them this amended rule, and they would have to decide it in accordance with the amended rule, unless the amended rule does not bind them, and does not bind him. Consequently the dispute which is now to be determined is a different dispute from that which was determined before, inasmuch as it has all to be determined under different rules. Therefore the preliminary objection taken by the defendants to the hearing of this case is a good one. It may be some consolation, perhaps, to the appellant to know that the point is not merely a technical point depending upon the preliminary objection as to jurisdiction, but as far as I can see at present, it has merits behind it, because finding that the existing rules could be interpreted so as to give a member 2s. 6d. a week sick allowance for his life, notwithstanding that he was in receipt of an income of 18s. a week, the members generally seemed to think that that was too much, and consequently they passed this new rule, reducing the amount to which the man is entitled to nothing at all where he is in receipt of earnings from other sources of 16s. a week. It is contended he is not bound by these amendments, but I fail to see why he should not be bound, because the first rule of the court, by which he certainly is bound, says that "the rules of that court shall be carried into effect in conformity with and subject to the rules of the district and the general laws, and that the rules of the district and the general laws with any alterations and amendments thereof hereafter made and duly registered shall be applicable to the members of this court, in the same manner as if they were inserted in the rules of the court." It follows from that, therefore, that having agreed to be bound by the rules of the court, and having agreed to be bound by the general laws and rules of the district, and also by any amendment of those general laws and rules of the district, when those amendments take place and are duly registered, he has agreed to be bound by them; and he can no longer get his half-crown while he is at the same time in receipt of this 18s. a week.

Mr. Justice Vaughan Williams: I am of the same opinion.

Mr. Tatlock: Then the appeal is dismissed with costs, my lord. I do not say that it will be enforced; but I ask for costs for this reason, if your lordship will allow me to explain. There are a number of cases depending upon this, and if it is seen in the papers that the appeal is dismissed without costs, it may be encouraging litigation. I do not say it will be enforced.

Mr. Justice Cave: If you ask for them, you are entitled to have them.

Mr. Tatlock: If your lordship pleases.

CASE 34.

COURT OF QUEEN'S BENCH. 1865. *Nov.* 16.

EX PARTE O'DONNELL.

Friendly Society—Proceeding against Assignee of Officer— (18 & 19 *Vic., cap.* 63), *sec.* 24.

An officer of a friendly society, being indebted to the society for moneys received on their behalf, resigned his office and made an assignment for the benefit of his creditors. The assignee received from the estate more than the balance due to the society, but refused to pay it over. No specific money belonging to the society was proved to have come to the hands of the assignee.

Held that the assignee was not liable to be proceeded against before justices under section 24 of the 18 & 19 Vic., cap. 63.

John Jones was up to 20th December, 1864, treasurer to the Liverpool Minerva Lodge of Oddfellows, a duly certified friendly society. On that day he resigned his office, being then indebted to the society in £73 for moneys received on behalf of the society. In January, 1865, the £73 being still unpaid, Jones executed an assignment for the benefit of creditors to two trustees, of whom one Isaac Storey is the survivor. Storey had received more than £73 out of Jones's estate, but had not paid any of it to the society, although he received notice to do so, under section 23 of 18 & 19 Vic., c. 63. An information was then laid under section 24 (1) against Storey, by Hugh O'Donnell, the present treasurer, on behalf of the society, charging Storey with having, as assignee of Jones, money in his possession belonging to the society, and withholding it. A summons was granted, and the information came on for hearing before the sitting justices of the borough of Liverpool, but they declined to adjudicate, on the ground that they had no jurisdiction, as Storey was not shown to have received any specific money belonging to the society.

Mellor, J. : I think there ought to be no rule. The justices were right. The facts show that the case is not within section 24. This is clear from that part of the section containing the penalty ; as my brother Shee pointed out, that section cannot apply to assignees who innocently, and it may be properly, receive money, but only to those cases where a person by his own act improperly obtains money, or, having it in his possession, refuses to give it up, then he is subject to all the penalties mentioned in that section. There is no evidence of the assignee having any money of the society.

Shee, J. : I think section 24 only applies to cases where specific money is in the possession of the trustees. If persons withhold any moneys, securities, books, papers, or other effects of a society, then they would be punishable in the manner pointed out by that section.

Lush, J. : I am of the same opinion. This application is in effect to compel the assignee to pay a debt in priority of the other creditors ; but

the application to the justices under section 24 can only be made where there is specific money shown to belong to the society in the hands of the officer or his assignee.

Rule refused.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic. cap.* 25, *sec.* 35.

CASE 35.

BOLTON DISTRICT NATIONAL INDEPENDENT ORDER OF ODDFELLOWS *v.* NATIONAL INDEPENDENT ORDER OF ODDFELLOWS.

QUEEN'S BENCH DIVISION.
1895.
Dec. 17.
E. SUTTON, ESQ.
1896.
Jan. 13.

Friendly Societies Act, 1875 (38 & 39 *Vic. cap.* 60) *sec.* 25—*Secession—Refusal of Secretary to grant Certificate—Fraudulent Voting.*

Award and direction of Edmund Sutton made under and in pursuance of an Order of the Queen's Bench Division of the High Court of Justice made by consent the 17*th day of December*, 1895.

Before E. Sutton, Esq., barrister at law. Mr. Hall (solicitor), Bolton, appeared for the appellants (the Bolton District National Independent Order of Oddfellows; and Mr. William Cobbett (of the firm of Cobbett, Wheeler, and Cobbett, solicitors), Manchester, appeared for the National Independent Order of Oddfellows, and Mr. Cleveland, the Corresponding Secretary.

This was an application by way of appeal by the Bolton District who were seceding from the Order, from the refusal of Mr. Cleveland, the Corresponding Secretary of the Order, to grant the requisite certificate. And such refusal was based upon the following grounds: – (1) That three-fourths of the members of the branch were not present, and did not vote for the resolution for secession, purporting to have been passed at the special general meeting of the branch, held on the 10th November, 1894; and (2) that the said resolution and the proceedings at the said meeting were and are void and inseparative, on account of the fraudulent and irregular manipulation of filling up and dealing with the voting forms thereat and thereafter, namely—personation, duplicates, voting forms filled up by persons other than the members, and voting by persons not entitled to vote.

There was evidence showing that, owing to the loose way the work was carried out, although there might have been in number three-fourths, still there were persons present who were not members, and had voting papers given them. The voting had not been carried out in the way the Act lays down—that every member shall subscribe his own signature; but papers were filled up by others as well as members, and thus brought about duplicates to a considerable number. Mr. Cobbett clearly showed that 241 of the voting papers must have been filled up

by other persons than the voters; and also that members under suspension had voted. Every particular was minutely gone into, and has an important bearing upon lodges or districts seceding. The award and direction of Mr. E. Sutton is as follows :—

Whereas, by the said order of the Queen's Bench Division of the High Court of Justice, made the 17th December, 1895, it was by consent ordered that the above matter should be referred to me, the above-named Edmund Sutton, to determine the following question :— "Whether the said Bolton District is entitled to an order commanding and directing the chief secretary, or other principal officer of the said society, to grant a certificate that the district has wholly seceded from the society." And, by the like consent, it was by the said order further ordered that the respective parties should appear before me, the referee, either in person or by solicitor or counsel, and that the evidence should be restricted to the affidavits then made, and the exhibits thereto, and the voting papers and accounts forwarded by the district to the corresponding secretary, and the books of the district. And, by the like consent, it was by the said order further ordered that I, the said referee, should have full power to deal with the question of costs, and direct by whom the same should be paid and borne, and that my award should be in writing, and be filed in the High Court of Justice, and should constitute the judgment of that court in the matter. And, by the like consent, it was by the said order, further ordered, that if I, the said referee should find that the above-mentioned district is entitled to such order as before mentioned, then, that the appeal herein under section 10 of the Friendly Societies Act, 1887, be allowed, and if I should not so find, then that the said appeal be dismissed. Now, I, the above-named Edmund Sutton, having taken upon myself, in pursuance of the said order, the burthen of the said reference, and having heard Mr. John Hall, solicitor, on behalf of the Bolton District, and Mr. William Cobbett, on behalf of the said society, and having read and considered the said affidavits and the exhibits thereto, and the said voting papers and accounts forwarded by the said district to the corresponding secretary, and the books of the district, to which the evidence laid before me was restricted as directed by the said order, do hereby make my award and determination in the said matter, in manner following, that is to say : I do hereby determine that the said Bolton District of the National Independent Order of Oddfellows' Friendly Society is not entitled to an order commanding and directing the chief secretary, or other principal officer of the said National Independent Order of Oddfellows' Friendly Society, to grant a certificate that the district has wholly seceded from the society. And I do order and direct that the said district do bear its own costs of the proceedings in the Queen's Bench Division of the High Court of Justice, and of the hearing before me. And I do further order and direct that the said district do bear and pay to the said society the costs of the said society of and in the proceedings in the Queen's Bench Division of the High Court of Justice, and of the hearing before me. And I do further order and direct that the costs of this, my award, shall be paid and borne by the parties hereto in equal shares and proportions. In witness whereof, I have hereunto set my hand this 13th day of January, 1896.—E. SUTTON.

N.B.— See Friendly Societies Act, 1896, 59 & 60, *Vic., cap.* 25, *secs.* 78 *and* 83.

CASE 36.

QUEEN'S BENCH DIVISION.

WILMOT *v.* GRACE.

1892. *Feb.* 29, *March* 3.

Friendly Society—Dissolution—Award of Chief Registrar—Appeal—Friendly Societies Act, 1875 (38 & 39 *Vic. cap.* 60) *sec.* 25, *sub-sec.* 8 *(d), (e).*

Where a friendly society has been dissolved by the award of the Chief Registrar under section 25 of the Friendly Societies Act, 1875, a member having a claim on the funds of the society is not entitled, under sub-section 8 (*e*) of that section, to take proceedings to set aside the dissolution merely on the ground that he is dissatisfied with the provision made for satisfying his claim.

Appeal from a decision of the Deputy Judge of the County Court of Derbyshire, holden at Alfreton.

The plaintiff was a member of the Ripley Baptist Benefit Society, registered under the Friendly Societies Act, 1875, 38 & 39 Vic., c. 60. On September 26th, 1891, upon the application by certain members of the society other than the plaintiff, the Chief Registrar of Friendly Societies, acting under section 25, made an award dissolving the society. The proper notice of this award was duly given. On November 24, 1891, the plaintiff commenced an action in the Alfreton County Court against the defendant, as treasurer of and representing the society. The plaintiff's claim was as follows: "The plaintiff claims, under the Friendly Societies Act, 1875, s. 25, that he, being a member of the Ripley Baptist Benefit Society, register 279, is entitled to a weekly allowance of 3s. under rule 14 of the said society, and the sum of £8 as burial money on death under rule 11. The society having been provisionally dissolved by the award of the Chief Registrar of Friendly Societies in 1891, and the sum of £2 16s. 2d. and 7¼d. in the pound on moneys available for division over £100 having been awarded to the plaintiff as his appropriation of the funds of the said society, the plaintiff is dissatisfied with the amount of the said award, and claims against the society the sum of £21 as his appropriation of the funds of the said society; and the plaintiff claims the sum of £21, or, in the alternative, that the order of dissolution be set aside." The Deputy County Court Judge held that he had no power to set aside or in any way vary the award of the Chief Registrar, and that until the award was set aside he had no jurisdiction to entertain the action. The plaintiff appealed.

1892, March 3rd. Cave, J. in giving judgment said: This is an appeal from a decision of the Deputy Judge of the County Court of Derbyshire, refusing to entertain an action claiming relief under section 25 of the Friendly Societies Act, 1875. The plaintiff's claim was as follows [the learned judge read it]:—The Deputy Judge held that he had no jurisdiction to vary or set aside the award of the Chief Registrar for the dissolution of the society. It does not appear that the attention of the judge was called to the Treasury regulations which have been brought to our notice, and his decision did not in any way turn upon them. Now, I am not prepared to decide whether a County Court Judge has jurisdiction under any circumstances to set aside the award of a Chief Registrar dissolving a friendly society; the question is one upon

which I should feel considerable difficulty. But it is not necessary to decide it here, because there is another objection to the plaintiff's claim which is, in my opinion, fatal. By section 25 friendly societies may be dissolved either by the agreement of the members, or by the award of the Chief Registrar. With regard to a dissolution by agreement of the members, any member (sub-section 7) (*d*) who is dissatisfied with the provision made for satisfying his claim may apply to the County Court, which clearly, therefore, has jurisdiction to deal with that case. But where the dissolution is effected by the award of the Chief Registrar, sub-section 8 (*d*) provides that every award under that sub-section, whether for dissolution or distribution of funds, shall be final and conclusive on the society in respect of which the same is made, and on all members and other persons having any claim upon the funds of the society, without appeal; so that, so far as that clause deals with the question, there is no appeal from the award of the Chief Registrar. But then comes the next clause (*e*), which provides that notice of the award for dissolution shall be advertised in the Gazette and in a local newspaper, and that, unless within three months from the date of the Gazette in which such advertisement appears, a member or other person interested or having any claim on the funds of the society takes proceedings to set aside the dissolution consequent upon such award, and such dissolution is set aside accordingly, the society shall be legally dissolved from the date of such advertisement. Now, clauses (*d*) and (*e*) of sub-section 8 must be read together, and their effect when so read is, in my opinion, this: under clause (*d*) there is no appeal from the award of the Chief Registrar upon the merits; the award in that respect is to be final and conclusive; but under clause (*e*) application may be made to set aside the award, not upon the ground that it is unjust as between the parties, but upon other grounds, such as that the Chief Registrar has exceeded his authority, or that he has not heard all the parties interested. I desire, however, to refrain from deciding to what court that application ought to be made. In the present case the plaintiff alleges that he has only been awarded £2 16s. 2d., whereas he ought to have been awarded £21. The appeal, therefore, is an appeal on the merits, being the very class of case to which clause (*d*) refers, and in respect of which it provides that the award shall be final and conclusive.

Upon this ground I am of opinion that the plaintiff is not entitled to appeal from the award of the Chief Registrar, and, therefore, that the Deputy County Court Judge was right in dismissing his claim.

Wright, J.: I am of the same opinion. I think the Deputy County Court Judge was right in holding that he had no jurisdiction to entertain the plaintiff's claim. I am of opinion that the case falls within section 25, sub-section 8 (*d*) of the Friendly Societies Act, 1875, and, therefore, that the award of the Chief Registrar was final and conclusive, and could not be appealed from. Speaking for myself, I do not think the Treasury had any power to make the regulations and forms, which have been brought to our notice, providing for an appeal to the County Court from the award of the Chief Registrar dissolving a friendly society.

Appeal dismissed.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 78.

CASE 37.

IN RE WEST OF ENGLAND AND SOUTH WALES DISTRICT BANK.

FRY, J. 1879. April 25.

EX PARTE SWANSEA FRIENDLY SOCIETY.

Friendly Society—Treasurer—Corporation—(38 & 39 *Vic.*, *cap.* 60), *sec.* 15, *sub-sec.* 7.

An incorporated banking company cannot be the treasurer of a friendly society within the meaning of the Friendly Societies Act, 1875.

The Swansea Friendly Society was established in 1867, and was duly registered under the Friendly Societies Act, 1875. The rules of the society provided that in the event of any vacancy occurring by the resignation or death of any officer, or in the event of his removal, the committee of management should elect a successor until the next annual meeting, when his appointment should be confirmed or another person elected in his place. The rules further provided for security being given by the officer of the society, and for the attendance of the treasurer at meetings of the committee and of the society. A former treasurer appeared to have been in default, and at a meeting of the committee of management of the friendly society, held on the 18th June, 1877, a resolution was passed that the West of England and South Wales District Bank should be the treasurer of the society. Three of the committee then called on J. S. Morgan the Manager of the Bank, who on behalf of the bank accepted the office of treasurer. An account was then opened by the society with the bank, and on the 9th December, 1878, when an order was made for winding up the bank, the money of the society in the bank was £496 11s. 9d. A summons was taken out by the trustees of the friendly society for payment to them of this sum as in the possession of the bank as treasurer of the society. It was stated at the bar that the bank was a corporation under the Joint Stock Companies Act.

Mr. Bristowe, Q.C. and Mr. Buckley in support of summons; Mr. Glasse, Q.C. and Mr. Romer for Liquidator of the Bank.

Fry, J. : I am of opinion that the claimants in this case wholly fail to establish their claim. They claim that a sum of £489 11s. 9d., which is standing to the credit of their account with the West of England Bank, should be paid to them in priority to any other creditor by virtue of the provision contained in the Friendly Societies Act, which follows similar provisions contained in similar Acts for a long series of years. The West of England Bank appears from the statement of counsel to be a company incorporated under the Companies Acts of 1862 and 1867, and is therefore a corporation. It appears that before the 18th June, 1877, a treasurer of this society had been appointed, and that defalcations had been m de by him, and that at a meeting of the committee the bank was appointed the treasurer of the society. Now, the rules of the society provide that in the event of any vacancy occurring by resignation or death of any officer, or in the event of removal, the Committee of Management shall elect a successor until the next annual meeting of the members of the society, when his appointment shall be confirmed or

another person elected in his place. On the 21st of May, 1878, a general annual meeting of the society was held, and it does not appear that at that meeting the appointment of the bank was confirmed, or any other person appointed treasurer. A question might therefore arise whether the court is to imply that the office is to continue. I should have a difficulty in coming judicially to the conclusion that it was necessarily so. But another of the rules provides that the treasurer shall give security; but it appears that security has never been given, and there may be from the case of *Ex parte* Ross, before Lord Eldon, considerable doubt whether a person who has been appointed to the office of treasurer, and has not given the security which the Acts require, is a person against whom the society can make a claim to have the benefit of a preferential right. But, further than that, the question arises whether a corporation can fill the office of treasurer according to the rules of this society. It is evident that the treasurer is intended to perform certain personal duties. He is to attend the meetings of the members and the meetings of the committee. It is said that that may be done by a manager or clerk, but it appears to me that the scope and intent of these rules, with regard to officers, is the appointment of natural persons who are to be officers of the society within the ordinary meaning of the word, and that great difficulties are involved in the performance of the duties of an officer by a corporation instead of a natural officer. And when I turn to the clause of the existing Act regulating these societies and giving the preferential right on which the claimants are now insisting, I find similar words, indicating to my mind a similar intention that the officer against whom and against whose estate a preferential right is to be enforced is to be a natural person and not a corporation. [*His lordship read sub-section 7.*] Now the whole scope of that clause appears to me to refer to a private individual who takes on himself an office, and it gives certain rights in the event of his death, his bankruptcy or insolvency, for execution, attachment, or process against his property or himself, and it is very remarkable that if it were in the mind of the legislature that an incorporated company could be the officer, and that priority should be given in the case of a winding-up, this Act, which was passed long subsequently to any of the winding-up Acts, is entirely silent with respect to the liquidation of the company, or the winding-up and distribution of the assets of the company. It appears to me that I am bound to read this clause somewhat strictly, and for the reason pointed out by Lord Eldon in *Ex parte* Ross and by the Lord Justice Knight Bruce, when Chief Judge in Bankruptcy, in *Ex parte* Harris, the right given is one against the common rights of Her Majesty's subjects, and therefore those who claim that right must bring themselves within the express provisions of the statute. The only words which can be relied on here are those which mention process against the property of the debtor. It is said that those words include liquidation. It appears to me to be a very doubtful proposition; but I decide against the applicant, because I think that the legislature has considered the officer against whom and against whose estate the benefit is given, as a private person and not as a corporation. For these reasons, to which I must add that it appears very doubtful whether the manager had any authority on behalf of the bank to accept the office of treasurer so as to bind the bank, although, undoubtedly, the bank might become the bankers of the society, I must reject the claim made before me, and I must reject it with costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 35.

CASE 38.

1844.
LINCOLN'S INN.
Feb. 15.
V. C. KNIGHT BRUCE, C.J.

EX PARTE THE REV. THOMAS WHIPHAM AND OTHERS.—IN THE MATTER OF AYSHFORD WISE, NICHOLAS BAKER, AND WILLIAM SEARLE BENTALL.

Country bankers, appointed by a friendly society to receive moneys, and to transmit them to their London agents, for the purpose of investment in the Bank of England to the account of the Commissioners for the Reduction of the National Debt, are not to be considered as appointed to an office in the society, within the meaning of the Friendly Societies Act, 4 & 5 Wm. IV., c. 40, s. 12.

This was the petition of three trustees of a friendly society called The Newton Abbott and Newton Bushel Men's Annuitant Society, praying that the assignees might be ordered to pay them the sum of £126 under the provisions of the Friendly Societies Act. The petition stated that the society was established in the year 1820, according to the provisions of the statute then in force concerning friendly societies; and that the rules of the society had been duly certified and enrolled pursuant to the directions of the 10 Geo. IV., c. 56, and the 4 & 5 Wm. IV., c. 40, and that the petitioners had been duly appointed trustees of the society, in whom all the real and personal property of the society was vested as such trustees, under the fourteenth of the rules of the society, so certified and enrolled according to the provisions of the Act of Parliament. That in the year 1829 it was resolved by the society that all the moneys and effects of the society should be invested in the Bank of England to the account of the Commissioners for the Reduction of the National Debt; and that, in order to carry such resolution into effect, it became necessary according to the rules of the Commissioners, whose business is transacted and carried on in London, that some agent should be appointed in London on behalf of the society, for the purpose of completing such investments. That in June, 1829, upon application being made to the bankrupts by the secretary of the society, the bankrupts undertook the employment and office of agents of the society, to receive such moneys of the society as they were desirous of investing to the account of the Commissioners, and to transmit the same to Messrs. Williams, Deacon & Co., of London, bankers, who were the London agents of the bankrupts, in order that Williams & Co. might complete such investment at the National Debt Office in London, upon the terms that the bankrupts should be paid by the society their charges for commission and postages in respect of the sums so to be received and transmitted by them. That, thereupon, at a quarterly meeting of the society duly held on the 29th June, 1829, it was resolved that Messrs. Williams, Deacon & Co. should be agents for conducting the business of the society with the Bank of England, as required by the National Debt Office, and that the bankrupts should be the medium through which the moneys were to be transmitted to those London agents for that purpose. That this resolution was duly communicated to the bankrupts by the secretary of the society immediately after the meeting was held, and that various sums of money were from time to time, from the year 1829 to the year 1841, paid by the treasurer of the society to the

bankrupts, and transmitted by them to Williams, Deacon & Co., for the purpose of investing the same in manner above mentioned. And that the receipt of all these sums of money, and all payments, with the charges relating thereto, and the commission charged by the bankrupts for the same, and also for the transmission to and from London of the declarations of the trustees for the purpose of the respective investments, and of the receipts from the Commissioners for the Reduction of the National Debt for the sums paid to them, were duly entered in an account between the trustees of the society and the bankrupts; and the receipts of the Commissioners were from time to time forwarded to the bankrupts, and by them handed over to the treasurer of the society. That the account consisted wholly, from its commencement to its close, on the credit side, of entries of the sums paid by the treasurer to the bankrupts from time to time to be transmitted to Williams, Deacon & Co. for such investment, and of payments made from time to time by the treasurer to the bankrupts for their charges, postages, and commission on payment of such sums; and consisted wholly, on its debit side, of the sums transmitted by the bankrupts to Williams, Deacon & Co., to be invested by them in manner aforesaid, and of the charges of the bankrupts for postages and commission on payment of the respective sums of money received by them of the treasurer to Williams, Deacon & Co. On the 29th June, 1841, the treasurer of the society paid into the banking house of the bankrupts the sum of £126, for the purpose of having the same invested in the manner before mentioned, at the same time giving to the bankrupts a declaration in writing, signed by two of the trustees of the society, directing the payment of this sum into the Bank of England, to the account of the Commissioners for the Reduction of the National Debt. The bankrupts alleged that they transmitted this declaration to Williams, Deacon & Co. with instructions to procure the investment of the money in the Bank of England to the account of the Commissioners, but, in fact, no such investment was ever made, it being alleged by Williams, Deacon & Co., that the bankrupts were largely indebted to them, and that no sum of money having been specifically remitted to them for the purposes of such investment, the above declaration was never acted on. When, however, the above declaration was so transmitted, Williams, Deacon & Co. held in their hands various securities to an amount and value far beyond the debt then due to them from the bankrupts. These securities had been deposited with them by the bankrupts for the purpose of securing the balance of their said debt, and were held by Williams, Deacon & Co. in the character of mortgagees. The accounts between Williams & Co. and the bankrupts were adjusted after issuing of the *fiat*, and the whole debt due to them from the bankrupts had been satisfied, partly by realization of some of the securities, and partly by the payment by the assignees of the remaining balance in the month of December, 1841; and such of the securities in the hands of Williams, Deacon & Co. at the date of the *fiat*, as remained unrealized when their debt was satisfied, were handed over or accounted for by them to the assignees, who had thus realized a much larger amount than the sum paid by them to Williams, Deacon & Co. in satisfaction of their debt, and the said sum of £126.

The Petition alleged, that under the circumstances above-mentioned, and by virtue of such their office of employment, the bankrupts, at the date of the *fiat*, had in their hands the sum of £126 belonging to the said society, for which no proof had been made under the *fiat*; and

that on the 6th July, 1843, a demand for this sum on behalf of that society was duly served upon the assignees.

A dividend of 5/- in the pound had been declared; and it appeared that there were still funds of the joint estate more than sufficient to pay the sum of £126.

The petitioners contended, that the sum of £126 was, at the date and suing forth of the fiat, in the hands of the bankrupt, by virtue of their employment and office, and that the petitioners were entitled to receive the same out of the bankrupts' estate, before any further dividend should be made.

Mr. J. Russell and Mr. Cholmley appeared in support of the petition, Mr. Anderdon and Mr. Bacon *contra.*

V. C. Knight Bruce, C.J. : This is an enactment creating a privilege against a common right, and therefore care should be taken not to enlarge the construction of it. The argument in this case has turned on the meaning of the word "employment" in the statute; but, if that word was to mean anything distinct from the word "office" which is the material word in the statute, it is strange that the word "employment" should not have been associated with the word "office" in the preceding part of the section; but there the word "office" only occurs. I cannot consider the word "employment" as enlarging the meaning of the word "office." The question is, whether these bankers had any moneys of the society in their hands "by virtue of their office or employment." I apprehend it is quite immaterial, whether they were employed in the ordinary way of bankers or not; the material point being whether they were appointed to any office in the society. It appears that the bankrupts were appointed to be the agents of the society in receiving and transmitting moneys to London for the purpose of investment in the Bank of England to the account of the Commissioners for the Reduction of the National Debt, and that Messrs. Williams, Deacon & Co. were the agents of the bankrupts for the same purpose in London. Any man, no doubt, may in a sense be said to be discharging the duties of an office, when he performs the duties attached to any particular employment; but a person who is acting as a mere agent for another, is not in the ordinary sense of the term, understood to be appointed to an office. Although there are some senses in which the term "office" may be used as synonymous with "employment," yet in the construction of this Act of Parliament, I think the word must be taken in the ordinary sense and meaning of mankind. A butcher, or baker, is employed by a customer, but neither of them holds an office to which the customer has appointed him. I am of opinion that the appointment of the bankrupts, as agents for this society, was not an appointment to an office or employment within the meaning of the Act of Parliament. I shall give no costs on either side.

Petition dismissed, without costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 35.

CASE 39.

IN CHANCERY.
1852.
Mar. 3.
Before the LORDS JUSTICES.

EX PARTE ORFORD.

Rules—Treasurer—Bankers not officers to entitle the society to preference in case of Bankruptcy.

By the rules of a friendly society it was provided that there should be appointed a treasurer or treasurers, in whose hands should be deposited all the cash belonging to the society, until the same should be placed out at interest, and that as soon as a sufficient sum should be collected it should (after leaving in the club box sufficient to pay the sickness and other expenses of the society) be deposited in the hands of the treasurer or treasurers of the society, and that the clerk or the stewards should take the same to the bank. No formal appointment of treasurer was made, but the moneys of the society were paid into a bank.

Held that the bankers were not "employed" as officers of the society so as to entitle the society upon their bankruptcy to payment in full.

CASE 40.

MERTHYR COUNTY COURT.
1876.
April 21.

RE SIDNEY THOMAS, A BANKRUPT.

Treasurer Bankrupt — Distress for Rent — Claim of Friendly Society—Demand in Writing—Landlord entitled to retain proceeds of distress in priority to claim of Society.

Mr. Beddoe for the Trustee, and Mr. Lewis for the Friendly Society and the Landlord.

His Honour Judge Falconer said: Sydney Thomas was treasurer of the Cyfarthfa, held at the Lamb and Flag. John Thomas and John John were his sureties. On the 14th of January, 1876, a distress was issued on the goods of the debtor, Sydney Thomas, for one year's rent, due on August 1st, 1875. On the next day, namely, January 15th, Sydney Thomas filed his petition for liquidation. The first meeting of creditors was on January 31st, when a resolution was passed, and a trustee was appointed. On February 1st another half-year's rent was due, and on that day there was a second distress. By section 35 when rent is not due when the order of adjudication is made the person entitled to rent when it would become due may prove for a proportionate part thereof as if it become due from day to day. As respects the rent for the year which was first distrained for, the landlord, under section 34, was entitled to receive it, and this is not disputed. In the case of *Ex parte* State *re* Binns, L.T.R., March, 1870, one Binns let premises to the debtor, the rent of which was to be paid by a forehand quarterly payment, beginning on the 14th of February, 1875. The quarters began, therefore, in February, May, August, and November. On the 24th of June, when the May forehand quarter's

rent was unpaid, the debtor filed his petition. This rent was paid in August, another quarter's forehand rent was due, and the landlord distrained. It was held by the Chief Judge that section 34 of the Bankruptcy Act, 1869, enabled a landlord to distrain for one year's rent in arrear, but it does not interfere with the common law right to distrain for what subsequently becomes due. The 34th section of the Bankruptcy Act, 1869, authorises the landlord before or after the commencement of the bankruptcy to distrain for one year's rent accrued, due prior to the adjudication, but the landlord may prove for the overplus due for which the distress is not available. Then section 35 provides that when the rent falls due at stated periods, and the order of adjudication is made at any time other than such periods, the person entitled to the rent may prove for a proportionate part thereof, up to the day of adjudication, as if the payment grew due from day to day. The landlord may prove for the proportionate part, that is, he may get less than the full amount of the part of the distribution of the estate. But if there is no disclaimer, and a stated period arrives for the payment of the rent accrued, due subsequent to the adjudication, then it appears that the landlord may distrain. It would also appear that up to the date of the adjudication, and before the arrival of the stated period for payment of rent, there is no right of distress, but a payment in the nature of use and occupation is to be made. When the common law affecting the right of distress is not expressly interfered with by statute, then, as all bankruptcy rules are statutory rules, if they are not expressly interfered with, the common law continues to prevail. See the case of Williams *v.* Taylor, 21, *Law Times* Report, 619. By the 23rd section of the Bankruptcy Act, 1869, the trustee may disclaim. A second question arises respecting a preferential claim of the club. There had been a doubt if the preferential right given to trustees of friendly societies under the Act of 18 & 19 Vic., c. 63, s. 23, was extinguished by the Bankruptcy Act of 1869. I think the decision of Judge Herbert, given in April, 1872, to that effect was correct. By the Act of the 38 & 39 Vic., c. 60, passed in August of last year (1875), section 15 [7], is now provided, that on the death, or bankruptcy, or insolvency of any officer of a society having in his possession, by virtue of his office, any money or property belonging to the society, the trustees in bankruptcy shall, upon the demand in writing of the trustees of the society, or any two of them, or any person authorised by the society, or by the committee of management of the same, to make such demand, pay such money, and deliver over such property to the trustees of the society in preference to any other debts or claims against the estate of the said officer. As between the landlord and the friendly society, it appears to me that the landlord may retain the proceeds of the distress. The claim of the society must be preceded by a demand in writing. The distress not perfected before such demand could have been made, then comes a third question, namely, how are the costs of liquidation to rank? Therefore the ranking of these claims will be—1st, the landlord will have the proceeds of his distress; 2nd, the friendly society will be entitled to be paid; 3rd, the costs of liquidation. [*Ex parte* page 25, *Law Times* Report, 716.]

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 35.

CASE 41.

HIGH COURT OF CHANCERY.
THE LORD CHANCELLOR.
1802.
April 27.

ROSS, *EX PARTE.*

Money paid by order of a friendly society from time to time upon notes carrying interest, there being no treasurer appointed, is not money in the hands by virtue of any office within the Act of Parliament, 33 Geo. III., c. 54, s. 10, entitling the society to a preference in case of bankruptcy.

The petition presented by the president and stewards of a friendly society under the Act of Parliament, prayed, that the assignees under a commission of bankruptcy may pay the sum of £334 4s. which the bankrupt, Dawson, had in his hands as treasurer at the time of his bankruptcy, either out of the joint or separate estate. Upon the affidavit it appeared, that no treasurer had been appointed by this society. The president and steward were chosen annually. The bankrupt had served the offices of president and steward in different years. In the latter capacity he had received the money of the society; but not in the former. The money which was the subject of this petition, was from time to time paid to him by the stewards and clerks by the order of the society upon promissory notes, bearing interest, given by him in the name of the partnership to the president and stewards; and upon a change in the partnership by taking in his sons the security was changed. The question was, whether under these circumstances this case was within the Act of Parliament.

Mr. Cox appeared in support of the petition; Mr. Heald for the assignee.

Lord Chancellor: In one case, Lord Rosslyn, held that any man, who got the money of the society in his hands was within the Act.

Upon a subsequent petition I could not agree to that. I had a most clear opinion, that it was impossible to maintain the proposition, that a man, who, by consent of the society, receives a sum of money, giving a promissory note for it as a debtor, is within the Act of Parliament an officer receiving it by virtue of his office. The case of another person receiving their money is the subject of another clause. If the bankrupt received as steward, president, as any officer of the society, for what he received by virtue of his office you may make him accountable. But if the president received £300 and the society afterwards authorised him to lend that out to a bank, in which he was a partner, they would not have it by virtue of his office. I have no conception, upon the meaning of this Act of Parliament, that if they authorise him to lend it out upon security, the persons to whom it is lent can be said to have it by virtue of his office. By the consent of the society it is taken out of that possession by virtue of his office.

I must observe, that, if these friendly societies expect the benefit of that very liberal, and perhaps more liberal than just, provision of the legislature in their favour, that all creditors, however meritorious, shall be sacrificed to their demand, it is their business to take the protection given them in the mode in which it is directed, by appointing a treasurer and making him give security according to the Act.

The affidavits being contradictory, I will order the commissioners to enquire whether any and what sums of money were in his hands at the date of the commission, by virtue of his office, belonging to the society. But let it be understood, my decided opinion is, that if the money was lent by the consent of the society upon a promissory note, carrying interest, it is not money in his hands by virtue of his office.

You may bring an action, if you please, under this Act.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 35.

CASE 42.

JOHN O'GAUNT LODGE OF ODDFELLOWS *v.* BELL.

PRESTON COUNTY COURT.

1883. *July* 31.

Before W. A. HALTON, ESQ.

Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap.* 16) *sec.* 15—*Preferential claim—Bankruptcy of Officer—Omission of Society to obtain from its treasurer, before he entered on his office, a bond, as required by the rules and the Act, section* 20.

Held that this neglect was, on the bankruptcy of the treasurer, fatal to the society's claim to be paid in priority to other creditors.

In this case, recently heard at the above court, his Honour, in giving judgment (wherein the facts are fully stated), said:—The trustees of the friendly society claim payment of the sum of £190 5s. 7d. from the assets of the bankrupt, in priority to the other creditors of the bankrupt. The claim is founded upon the 15th section of the Friendly Societies Act, 1875, by the sub-section of which it is enacted "that upon the . . . . bankruptcy or insolvency of any officer of a society, having in his possession, by virtue of his office, any money or property belonging to the society . . . . the trustee in bankruptcy or insolvency . . . . shall, upon demand in writing of the trustees of the society, or any two of them . . . . pay such money and deliver over such property to the trustees of the society, in preference to any other debts or claim against the estate of such officer." The Loyal John o' Gaunt Lodge Friendly Society has been established for many years in Lancaster. Officers were appointed, and their duties were laid down. John Bell was alleged to have been appointed treasurer to the said lodge, and by virtue of his office to have received the sum of £190 5s. 7d., and to have had such sum in his possession at the time he became a bankrupt. It was admitted that such sum was duly demanded from the bankrupt's trustees by the trustees of the friendly society. The claim of the trustees of the friendly society was disputed by the trustees in bankruptcy on the grounds: first, that John Bell never was duly appointed treasurer of the said society; secondly, that the said sum of £190 5s. 7d. comprised many sums of money which were not received by the bankrupt in the capacity of an officer of the said society, and that the said lodge was not entitled to any priority over the other creditors of the bankrupt; thirdly, that the said lodge has never taken, as

required by the rules of the said lodge and the Acts, sufficient security from the bankrupt. I have considered the statements and evidence laid before me; and in the first place I am of opinion that John Bell was, in fact, appointed treasurer of the said lodge. It appears that in the books of the society there is an entry, under the date of the 30th of June, 1864, to this effect, "Resolved that John Bell be treasurer;" and the entry purports to be signed by parties who represent themselves respectively to be the Noble Grand and the secretary of the society. The appointment was also spoken to by a witness, who alleged that he was present at the meeting. And it may be remarked that a document was produced at the hearing, under the date of the 22nd of March, 1869, whereby John Bell, with two sureties, signed a form of a bond to the trustees of the society conditioned for his performance of his duties as treasurer. I am of opinion that the security was not shown to have been duly executed, but the attempt must be accepted as a confirmation of the statement that Bell had been appointed treasurer. I conclude, therefore, that he was appointed treasurer of the society, and I see no reason to doubt that he remained formally the treasurer of the society until his bankruptcy. The second objection raises questions more difficult to determine. It is clear that the society can only have a preferential claim when the money or property has been received by the treasurer by virtue of his office. Now, by the 15th of the rules of the lodge, in force when he was appointed treasurer, his duty was to take charge of such of the funds of the lodge as were not put out to interest, and out of this he was to pay all demands when ordered to do so, as therein mentioned. It appeared that a large sum of money or interest on investments had been received and carried to the treasurer's accounts, and if the duties of the treasurer had not been altered there might have been a difficulty in saying that any and what part of the £190 5s. 7d. had been received by Bell by virtue of his office. But I incline strongly to think that the exception in the 15th rule applies only to investments when made, and not to interest on such investments, and that such interest forms part of the funds properly under the charge of the treasurer. However, in July, 1881, the rules of the society were altered, and registered under the Friendly Societies Act, 1875; and the duty of the treasurer with reference to the funds of the society was enlarged by the 10th rule to taking charge of the funds of the lodge generally. I am of opinion, therefore, that the difficulty suggested, if it ever really existed, has been got over. The third and last objection made by the trustees under the bankruptcy is, I think, fatal to the application. When John Bell was appointed treasurer, the Friendly Societies Act, 18 & 19 Vic., c. 63 was in force; and, by the 21st section of the Act, it was enacted that the treasurer should, before he took upon himself the execution of his office, become bound, with one sufficient surety, in bond according to the forms and conditions as therein mentioned. And by the 15th of the rules then in force in the society the treasurer, before taking upon himself the execution of the office, was to give security by bond as therein mentioned. By the Friendly Societies Act, 1875, and by the recent rules of the friendly society, similar provisions were enacted and provided. It has, therefore, been the duty of the trustees of the said society, since the appointment of the said John Bell as treasurer, to take care that he entered into the security pointed out by the statutes and rules. But, in my opinion, it has not been shown that that condition was complied with. It appears that on the 22nd of March, 1869, John Bell and two sureties signed an instrument in the form of a bond

to the trustees of the society for the due execution of his duty as treasurer; but both he and his sureties omitted either to seal or deliver the document. It wanted the essentials of a bond, and, in my opinion, could not have been enforced. The right of priority is against common right, and those who claim it must bring themselves clearly within the statute giving it. There can be no presumption that the document had been either sealed or delivered, and there was no evidence at the hearing that either of these essentials had been performed. The case *Re* Sandilands is an instance of the difficulty of making such a presumption even under what may be termed more favourable circumstances (*Re* Sandilands: L.R., 6 c., 412). The case is therefore brought within the decisions which make the entering into the securities pointed out by the statutes and rules, conditions precedent to a preferential recovery against the trustees of a bankrupt treasurer of a friendly society. (See Ex p. Bailey, 23 L. J. Bankruptcy, 36 n.; Ex p. Swansea Friendly Society, 11 Ch. D. at p. 771; Absolom *v.* Gethin, 32 Beav. 325; S. L. T. N. S. 133; 32 L. J., ch. 787). And in a case under a former Act, 33 Geo. III., c. 54, which contained similar provision, as to security by a treasurer, Lord Eldon said: "I must observe that if these friendly societies expect the benefit of that very liberal, and perhaps more liberal than just, provision of the legislature in their favour, that all creditors, however meritorious, shall be sacrificed to their demands, it is their business to take the protection given them in the mode in which it is directed by appointing a treasurer, and make him give security according to the Act." Ex p. Ross 6, Ves. 302. I cannot, therefore, accede to the application, and I must dismiss it with costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *secs.* 35 & 54.

QUEEN'S BENCH DIVISION.
WILLS, J.
AND
WRIGHT, J.
1895.
Feb. 6.

CASE 43.

SOUTER *v.* DAVIES AND OTHERS.

Friendly Society—Alteration of Rules—Vested interests of members—Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap.* 60), *sec.* 6.

Appeal from the decision of his Honour Judge Stoner at the Marylebone County Court. The action was brought against the trustees of the Friendly Society of Coach Trimmers to recover the sum of £2 12s., being 13 weeks superannuation benefit at 4s. a week alleged to be due to the plaintiff under the rules of the society. At the time when the plaintiff became a member of the society it was governed by rules certified in 1868, and in conformity with article 4 of those rules he signed a declaration upon his admission as a member that he would abide by all the rules of the society. Article 9 of the same rules provided that when a member became incapable of working at his business through old age, infirmity, or accident, he should be paid from the sick, superannuated, and burial fund, if he had been a free member for ten years, four shillings a week during the remainder of his life. By an amendment to the rules certified on the 31st of December, 1879, it was provided that a separate fund for the relief of members in old age should be

formed. By an amendment certified on the 14th October, 1892, article 9 was rescinded. The plaintiff paid all his contributions up to the year 1890, when he became incapable of working through paralysis. From this time payments of four shillings a week were made to him until July, 1894, when they were discontinued. The plaintiff had from time to time received balance-sheets of the society, which showed that the superannuation payments had been made, not out of the fund provided by article 9, but out of the fund established by the amended rules of 1879. The County Court Judge held that the plaintiff was, under article 9, absolutely entitled for his life to the weekly payment in question free of all contributions, and at the same time lost, in consideration of these payments, certain claims which he would otherwise have had on the society, and that no subsequent amendment of the rules could alter his rights, unless he had consented to the amendment, of which consent he held there was no evidence. He granted leave to appeal on the question whether the amendment of 1892 rescinding article 9 had a retrospective operation, so as to take away the plaintiff's right to the weekly payments.

The court (Wills and Wright, J.J.) dismissed the appeal.

Wills, J. : In my opinion the County Court Judge was right. The one point of importance in the case is whether this society had power to alter its rules so as to deprive this man of the benefits to which he was entitled under article 9. There is no evidence that he ever agreed to such an alteration. The question is whether this society, formed long ago, and subject at one time to the Act of 1855, and afterwards to the Act of 1875, can alter their rules so as to affect a member who signed the rules as they stood before the alteration. The basis of these societies is a contract between the members ; and, apart from any Act of Parliament, if they contract together, and if their rules contain no power of alteration, those rules are binding on each member, and each member is entitled to the benefits which they give him, unless he agrees to an alteration. Section 27 of the Act of 1855 (18 & 19 Vic., c. 63), gives these societies express power to alter their rules, but the Act of 1875 repeals that Act, and takes away that power. I cannot doubt that that was done advisedly. By section 4 "Rules" means rules for the time being, and section 6 provides that, "every society now subsisting, whose rules have been registered, enrolled, or certified under any Act relating to friendly societies . . . shall be deemed to be a society registered under this Act, and its rules shall, so far as the same are not contrary to any express provisions of this Act, continue in force until altered or rescinded," that means until altered or rescinded, if that can legally be done. It is said that these words impliedly re-enact section 27 of the Act of 1855. I am satisfied that they do not confer a power of altering or rescinding rules where such a power does not exist. Cases have been cited where the rules conferred a power of alteration, and a member has consequently been held to be bound by an alteration. That has been carried furthest in the case before Chitty, J. (Pope *v.* City and Suburban Permanent Building Society). There the question in dispute was at what time after giving notice of withdrawal, the plaintiff ceased to be bound by the rules, and it was held that he did not cease to be a member until actually paid out. I do not in the least question that decision, but it is no authority for the proposition that when there is no power either in the rules or given by Act of Parliament to alter rules, they can yet be

altered to a member's disadvantage. It is said that once the rules are certified, we cannot consider whether there was power to make them or not, but neither of the cases cited (Dewhurst *v.* Clarkson and Rosenberg *v.* Northumberland Building Society) bears out this contention. In both those cases the objection taken was that the proper formalities had not been observed in making the rules, and it was held that as to those matters the certificate was conclusive. The County Court Judge was right, and his judgment must be affirmed.

Wright, J. : Whatever power of alteration there may be, it cannot enable the society to repudiate an existing debt vested in a member unless he has agreed to be bound by the alteration. Appeal dismissed.

CASE 44.

IN *RE* CLARK'S TRUST.

CHANCERY DIVISION. HALL, V.C. 1875. *Dec.* 17, 21.

Friendly Society—Bequest in aid of its Funds—Residuary Bequest—Charity.

A friendly society is not a charitable institution, and therefore the doctrine of *cy-près* will not, on the society being voluntarily dissolved, be applied to a bequest made to it in aid of its funds, but the same will fall into the testator's residuary estate.

William Clark, by will, in April, 1833, republished in December, 1836, bequeathed all his personal estate (excepting a certain part of it) unto trustees named, upon trust to convert into money and to pay thereout certain legacies, and after giving several charitable legacies, the testator bequeathed as follows :—"I give the sum of £500 sterling, further part of my residuary personal estate, to be laid out and kept invested in some or one of the public stocks or funds of Great Britain in the names of such persons as shall be nominated from time to time to be trustees thereof by the friendly society called the Ringwood Friendly Society, lately held at the Red Lion Inn, but now held at the Crown Inn, in Ringwood aforesaid, upon trust to apply the dividends and income thereof in aid of the funds of the said society." After making some other bequests upon trust for other friendly societies, and other charitable bequests, the testator disposed of the surplus of his residuary personal estate in favour of his wife.

The testator died in December, 1841. The sum of £500 was duly appropriated to answer the legacy, and it was paid to the trustees for the time being of the Ringwood Friendly Society.

On the 23rd of April, 1867, the legacy was represented by a sum of £477 9s. 1d. £3 per cent. annuities, which was standing in the name of the three trustees of that society ; and on that day they transferred that sum into the names of the official trustees of charitable funds upon trust for the Ringwood Friendly Society.

In August, 1874, the society was duly dissolved by agreement, authorised by the 18 & 19 Vic., c. 63, s. 13, and it ceased to exist. No claim was made on the trust fund by the society or by any trustee or member of it.

The widow of the testator, who died in March, 1849, by will in 1843 gave all her residue of her estate unto her son and daughter, their heirs, executors, and administrators, to be equally divided between them as tenants in common, and appointed them executor and executrix of her will. The son died in 1857, and the petitioner was his legal personal representative. The daughter died in July, 1866, and the petitioner was also her legal personal representative. Upon the dissolution of the society the petitioner applied to the Charity Commissioners for the transfer of the fund to him as such legal personal representative, and they, after stating that it seemed to them doubtful whether or not the fund was impressed with a trust for charitable purposes generally, and that the question must be decided by the Court of Chancery, transferred the fund into the names of Messrs. Dyer and Veal, the two survivors of the trustees who had transferred the fund to them, and they transferred it into court, less certain costs. The fund was now represented by a sum of £431 5s. 2d. £3 per cent. annuities, and the petitioner prayed that, after payment of the costs of the petition, the residue of the fund might be transferred to him.

Mr. Phillpotts for the petitioner; Mr. Rigby for the Attorney General.

The particular object of the society is sufficiently referred to in the judgment.

Dec. 20. Hall, V.C., after stating the facts, continued: The petitioner has contended before me that the gift to the friendly society was, if a good charitable gift, a gift to a private charity, and that such private charity having been dissolved, the testator's gift to the charity has determined, there not having been, as the petitioner alleges, any such gift for charitable purposes as that the fund must, by reason of the failure of the primary charitable object, be applied *cy-près* for charitable purposes. On behalf of the Attorney-General it has been contended that the testator's will must be construed as impressing the fund with charity, and that, although it cannot longer be applied as directed, it must be applied *cy-près*. It appears to me that the first inquiry is whether the gift to the friendly society is a gift to a charity. I have been furnished with a copy of the rules of the society, which was originally founded in July, 1777, and from them it appears to me that the society was one whose members were to provide by subscription and fines a fund to be distributed for their mutual benefit in cases of sickness, lameness, or old age. Poverty of the member at the time of his sickness or lameness, or in his old age, was not required to entitle him to an allowance. It appears to me that the society was not a charitable institution. The legacy, when paid, augmented the society's funds; but such funds not being, as I consider, funds clothed with a charitable trust, their character was not wholly, nor I think to the extent of the addition, varied by such addition.

The gift was, I think, invalid, as aiming at creating a perpetuity in which respect it is like the case of Carne *v.* Long. The society being dissolved, and the fund not being claimed by the trustees, who are respondents to the petition, it and any dividends in court must be transferred and paid to the petitioner as representative of the executor and residuary legatee of the testator.

CASE 45.

ANDREWS *v.* SOUTHWART AND OTHERS.

LEEDS ASSIZES, 1885. *Feb.* 21. *Before* CAVE, J.

Friendly Society—Bond for repayment of money due from a defaulting Secretary—Action to recover moneys due under—Stifling a prosecution—Counter claim for repayment of money paid under Bond.

Held that the Bond was void, and ordered to be given up to be cancelled. Counter claim dismissed.

This was an action tried without a jury, in which Joseph Andrews and Solomon Robinson, the trustees, and Jonathan Craven, secretary of Court Charity, No. 403, of the Bowling District of the Ancient Order of Foresters, sought to recover the balance and interest accruing on a bond executed by Alfred Southwart, contractor, Robert Southwart, mason, and John Southwart, grocer, Thornton. The defendants disputed the validity of the bond on the ground that it had been obtained by coercion and under a threat, and entered a counter claim for £50 paid on account of the bond. Alfred Southwart was formerly secretary of Court Charity, and when he resigned in June, 1883, certain defalcations, it was alleged, were found in his accounts, amounting in the aggregate, it was stated, to over £100. In order to make up this alleged deficiency, a bond for £131 16s. 6d. was executed, Robert Southwart and John Southwart being the sureties. The bond stipulated that the money due to the court should be paid by instalments, and the consideration set forth was that no legal proceedings should be taken for the recovery of penalties under the Friendly Societies Act against Alfred Southwart. It was alleged by the Southwarts that the bond was obtained by threats of legal proceedings, but this was denied by the plaintiffs. When the alleged discrepancies were discovered in Southwart's accounts, the court expelled him, but without giving the notice required by the general laws. On Southwart appealing to the Arbitration Committee of the Bowling District, that body upheld the decision of the court. Southwart then appealed to the Final Arbitrators, who at a meeting at Bradford, on an objection taken by Southwart, decided that he had been illegally expelled, and rescinded the resolution of the district, and ordered the court to reinstate him. Though the proceedings were declared invalid in the award, the Final Arbitrators did not give their reasons for coming to that decision. Witnesses were called on both sides, and Mr. Beverley submitted that there was ample proof that no threat was used. His lordship: The bond stipulates that no proceedings shall be taken except the terms are broken. This prevented plaintiffs prosecuting so long as the terms of the bond were kept, and was an agreement to stifle prosecution. Mr. Beverley: I submit, my lord, that the proceedings referred to in the bond were proceedings under the Friendly Societies Act in the nature of civil and not criminal action. His lordship: The plaintiffs agreed to take no proceedings of any kind so long as the terms were kept, and that is fatal to the bond. Mr. Beverley then proceeded to argue that, since it had been ruled that the bond was invalid, the defendants could not recover money which had been paid for the purpose of stifling prosecution. His lordship: The right to recover the £50 depends upon whether or not Alfred Southwart made out that he did not owe the money, if he does not owe the money, the plaintiffs have extorted it from him under a threat of

prosecution; and if he does owe the money there is no ground upon which he can recover it. His lordship shortly afterwards summed up. After stating the particulars of the claim as given above, he proceeded: —As to the bond, I am clearly of opinion that they (the defendants) have not made out their case. Every agreement to stifle prosecution by English law was invalid, and I have no doubt that this agreement was intended to stifle prosecution. There has been considerable contest as to whether there were any actual threats made, but to my mind that is perfectly immaterial. In the case of Williams *v.* Bailey, which was decided in the House of Lords, it was held that an agreement to stifle prosecution is illegal, and that it was quite immaterial from which party the proposition came. In this particular case it is impossible to look at the document itself without seeing that there was an express agreement to stifle prosecution. In the first place, the case made out by the plaintiffs was that there was a deficiency in the accounts of Alfred Southwart, and it was stated that an agreement was come to whereby they agreed to take a bond for himself, and two bondsmen, for the repayment of the money at certain stipulated periods. The bond was given to secure payment of £131 16s. 6d., and it was expressly provided that no proceedings of any kind should be instituted against Alfred Southwart until after default of the payment of that sum, or instalments thereof, as therein provided. Proceedings of any kind undoubtedly included criminal proceedings. We know that before this bond was entered into, reference had been made to criminal proceedings, that a motion was made in the society to take out a warrant to have Alfred Southwart locked up, and that reference had also been made to proceedings which might be taken under the Friendly Societies Act. The bond having been signed, the sum of £50 was paid in December, 1883. The remaining sum not having been paid, a writ was issued on the 3rd of July, 1884, and on the 16th of the same month the defence and counter-claim were made. On the 16th of August the society passed a resolution to prosecute, and on the 6th of October a summons was taken out. On the 9th of October there was a hearing, but the case was dismissed, and the plaintiffs were bound over to prosecute. Shortly afterwards, however, the plaintiffs gave notice of their intention of abandoning the prosecution. It is clear that the bond was given to stifle prosecution, and was void, and must be given up to be cancelled. The next point is in reference to the sum of £50. The case of Unwin and Leper differs from this, as in that action it was a simple case of extortion. There was no debt at all. The case last cited by Mr. Seymour is of a similar character, but the payment in that case was voluntary, there being no debt. In this case it seems to me that the whole question is whether there was or was not a debt due to the society. If it has been established that there was not a debt due to the society, then it has extorted £50 that was not due to it, and it must restore that amount. If, on the other hand, that sum was due, they had obtained £50 in discharge of a just debt, and I am not aware of any case or authority in which it has ever been held that a sum paid under those circumstances can be recovered. Therefore, I have to decide whether the defendants have made it clear that the sum of £50 was paid under such circumstances as entitle them to recover it. The onus of making that out was upon the defendants, who have set up the counter claim, and to my mind they have not satisfied that onus. I cannot look through these balance sheets without coming to the conclusion that Alfred Southwart was a party to the misappropriation of this money. In 1875, it appears from the balance sheet that the sum of £125—money lent to the Wesleyan trustees—was

paid off, and that it was invested in a bond of the Bradford Corporation. Undoubtedly it ought to have been so invested; but, had it been, they would have received a second bond—they had already one bond for £300—and they would have received a second bond for £200. Alfred Southwart, as the person who drew up the balance sheet, must have been perfectly well aware of the circumstance. No such bond, however, was received at the time, but in 1878 such a bond was obtained. The bond was actually sent to Southwart, and his letter acknowledging its receipt has been produced. Southwart must have been well aware that in 1878 a bond for £200 was obtained from the Bradford Corporation. Having referred to other deficiencies of a similar nature, his lordship proceeded:—Now, all these balance sheets are in the handwriting of Alfred Southwart, and yet I am asked to believe that he is utterly innocent of the matter, and that the moneys were handed or not handed to him by the treasurer, and that he merely put down what he was told in the accounts. I find it extremely difficult to believe anything of the kind. Having referred to the proceedings taken by the society in the matter, all of which are explained in the course of the evidence, the judge went on to say:—I cannot but come to the conclusion that the sureties must have felt that the charges were too well founded, and, consequently, I am driven to the conclusion that there was an actual debt due from Alfred Southwart to the society, and therefore the sum of £50 cannot be got back. The bond must be delivered up to be cancelled, and the counter claim is dismissed. It is only fair, as each have succeeded in part, that the parties should pay their own costs.

CASE 46.

MASTER OF THE ROLLS.

GRIMES *v.* HARRISON.

March 17, 18, 19, 21. *Building Society—Change of Purpose—Misapplication of Funds—Breach of Trust.*

A building society was established and the rules certified under the 6 & 7 Wm. IV., c. 32; the directors subsequently changed the name, and sought to convert it into a freehold land society. They made no alterations in the rules, but they applied the funds of the society towards the payment of the purchase money of a piece of land they contracted to purchase. *Held* that the objects of the society could not be changed, and that the rules of the original society could not be adapted to any altered purpose; that the rules did not authorise the purchase of land, and that the directors must replace the money; that the trustees were not responsible for the funds, as they only acted ministerially when they signed the cheques for payment; they were, however, refused the costs of the suit.

CASE 47.

LINCOLN'S INN. THE VICE-CHANCELLOR. 1818. *13th March.*

EX PARTE BUCKLAND IN THE MATTER OF THICK.

The 33 Geo. III., c. 54, s. 10, only applies to cases where the officer of the friendly society has, by virtue of his office, been entrusted with the moneys and effects of the society.

This was a petition by the members of a benefit society, under the commission of the clerk of the society, who had become bankrupt.

Mr. Bell and Mr. Richards opposed it, because it was sworn the clerk was not the person authorised by the society to receive the money, and that upon its being claimed from him as a debt, he had given security for the repayment of it to the society. Mr. Roupel for the petition.

The Vice-Chancellor: This petition must be dismissed, on the ground that the bankrupt was not the proper person to receive the money. It is not sufficient to show that he was an officer of the society, it must appear that he was entrusted with the money in virtue of his office.

Petition dismissed without costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 35.

CASE 48.

MASTER OF THE ROLLS. 1801. *May* 19.

THE AMICABLE SOCIETY OF LANCASTER, *EX PARTE*.

The Statute 33 Geo. III., c. 54, giving preference to friendly societies, having money due to them from their officers, dying or becoming bankrupt or insolvent, does not extend to debts due from them individually, and not in their official characters.

The petition presented by John Corless stated that previously to February, 1792, James Parkinson, a member and treasurer of the Amicable Society of Lancaster for that year, having as such treasurer got into his hands the sum of £70 belonging to the society, and the society being also possessed of the further sum of £30, such sum was in February, 1792, paid into his hands as treasurer; and thereupon he executed a bond, dated the 13th February, 1792, to the petitioner, also a member of the society, and appointed co-treasurer with him, in the penal sum of £200, with a condition to be void upon payment by Parkinson, his heirs, executors, administrators to the petitioner, his executors, administrators, or assigns, in trust for the society, of £100, with interest at £4 15s. per cent. upon the 13th February next.

In October, 1797, Parkinson died intestate, and his widow took out administration. The petition was presented under the Act of Parliament alleging notice, before the administratrix had fully administered;

the affidavit in support of it stating that she knew of this debt before her husband's death; and that, except the sum of £35, which was lent to Parkinson by the society, the money came to his hands as treasurer, while he was in office.

The administratrix by her affidavit stated that her husband died indebted to the crown as postmaster, to his landlord for rent, and by bond and mortgage, to an amount exceeding the real and personal estate; and that soon after his death she gave warrants of attorney, being threatened by the creditors. She denied that any application was made to her, or that she had any notice of this debt till eight months after his death. She also stated that this money, or the greater part of it, had been lent to him under a vote of the society; and consisted of money called in for that purpose, and was not in his hands as treasurer.

Master of Rolls: Whether the preference to friendly societies under the Statute 33 Geo. III., would prevail against the Crown; *quære*.

The words of the Act are very large; sufficient, as it seems, to give this preference against debts due to the Crown, though perhaps it would not be so construed. The debts to be preferred are not generally all debts due to the society, but only debts due from an officer or trustee of the society; but if the society trusts any person upon his private security, those debts have no preference. The question, therefore, is whether this money came to the hands of Parkinson as trustee of the society. Upon the whole, I am of opinion this money was not left in his hands as a member of the society, but was voluntarily left in his hands after he ceased to be trustee upon his security. It is really incumbent upon these societies to give early notice to the personal representatives, and not to lie by and let them administer the assets. The Act does not limit any time for making the demand upon the administrator.

The ground upon which I dismiss this petition is that this money was not received by him as an officer of the society.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 25.

CASE 49.

THE LORD CHANCELLOR. 1808. *Aug.* 11.

STAMFORD FRIENDLY SOCIETY, *EX PARTE*.

The preference, given to friendly societies by the Statute 33 Geo. III., c. 54, s. 10, over other creditors, is confined to debts in respect of money in the hands of their officers by virtue of their offices, and independent of contract, therefore does not extend to money held by the treasurer upon the security of his promissory note, payable with interest upon demand.

This petition presented by two of the members of the friendly society, on behalf of the society, under the Act of Parliament, prayed that the assignee of Hanson, who had taken the benefit of an act of insolvency,

may be ordered to pay the sum of £60 with interest to the petitioners, in full discharge of his debt to the society, and in preference to his other creditors, under the following circumstances :—

The petition stated, that Hanson, who kept a public house, at which the society assembled, upon the 8th of October, 1805, the day of their annual meeting, as the father and treasurer of the society, had in his hands £30 belonging to them ; and, the society having some money in the box, £20 was placed in the hands of Hanson, who gave as security his promissory note, expressed to be for the sum of £50, borrowed and received of the society, which he promised to pay upon demand with £4 per cent. interest. The other sum of £10 was stated to have been placed in his hands under the head of subsistence money. He paid interest upon the sum secured by the note for two years.

Mr. Heald in support of the petition, referring to the late cases upon this Act of Parliament, contended that the whole of this sum of £60 was money in the hands of Hanson, as treasurer of the society, and, therefore, a debt under the Act to be paid in preference to his other creditors ;' distinguishing those cases, as the money was not in the possession of the party as an officer.

Mr. Hall, for the assignee : Of this debt £50 clearly cannot be considered as within this Act of Parliament. That was not in his hands as an officer of the society ; according to the words of the Act, money remaining due, received by virtue of his office, but money lent to him upon security, with interest at a particular rate : a case provided for by another clause of the Act.

This case falls within the cases that have been mentioned, except as to the £10, which certainly is under different circumstances.

The Lord Chancellor : It is not for my consideration whether this Act of Parliament, which certainly has a very harsh operation upon other creditors, excluding every fair, honest demand from sharing equally with these societies, was a reasonable provision of the legislature ; but at least, those who claim the preference must show their right to it in the mode prescribed by the Act. The preference is given in respect of money, received by officers of these societies by virtue of their offices, but it never was the intention of the legislature that persons, to whom they chose to lend their money, should pay them in preference to other creditors. The preference is given only in respect of money, which got into the hands of officers independent of contract. This petition is entirely silent upon the fact, how far, and for what purpose, the rules of this society permitted the treasurer to receive and keep money, except the single allegation, that, as father and treasurer of the society, he had in his hands £30, which is an averment that he had that sum in his hands as treasurer. The whole of this sum of £50 was money in his hands by contract, not upon bond, or any obligation by virtue of his office. As to the £10, it is probable that sum, which is stated to have been placed in his hands as subsistence money, did get to him as treasurer. Keeping the public-house where they met, he might have had the money in his hands for that purpose. My opinion is that the legislature did not intend that these societies should have the very large remedies given to them by this Act of Parliament, unless the money was dealt with precisely as the Act directs ; and if, instead of resting upon the security which the legislature gives them, they lend money to one of

their officers upon a special contract between him and them, that is a loan to him, and is not to be considered as money in his hands by virtue of his office within this Act of Parliament. These societies must understand, that, if they will lend money upon special contract, they have not the remedies which they suppose they have.

The order was accordingly made for payment of the sum of £10, but was refused as to the remainder of the petition.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 35.

CASE 50.

SIR J. CROSS.

EX PARTE BURGE.

1841. *Jan.* 29.

Loan by Treasurer—Security in name of Society—Bankrupt Borrower—Security insufficient—Priority.

The treasurer of a Friendly Society having a debt due to him from a person who offers a security, takes the security in the name of the society and retains the amount of his debt out of the society's moneys in his hands. Sometime afterwards he became bankrupt, having in the meanwhile debited himself annually in his accounts with the society with the interest on the amount for which the security was taken. The security proves insufficient, and was not in the description or taken in the manner required by the Friendly Societies Act.

Held that the omission on the part of the society to take steps for setting aside the transaction, and calling in the money before the bankruptcy, did not deprive them of their statutory rights to be paid in full before the other creditors.

CASE 51.

THE LORD CHANCELLOR.

ASHLEY, *EX PARTE*.
CORSER, *EX PARTE*.

1801.
Feb. 7th.
Aug. 8th.

A person in the habit of receiving the money of a friendly society, having no treasurer appointed, upon notes carrying interest, payable a month after demand, is not an officer of the society, so as to entitle them to a preference under the Statute 33 Geo. III., c. 54, s. 10.

Richard Smith and George Watson, attorneys, in partnership at Whitchurch, in Shropshire, were, from the commencement of the establishment of a friendly society, in the habit of receiving from the stewards the money of the society, whenever it amounted to a sum which they considered worth placing out at interest, giving their promissory notes from time to time carrying interest. Watson died; and Smith became bankrupt in 1795. At the time of his

bankruptcy he was indebted to the stewards of the society to the amount of £145 upon his promissory notes, payable on one month's notice, which sum was composed of principal and interest due on several promissory notes of Watson & Smith.

No person had been appointed treasurer of the society.

The first of these petitions was presented by the steward of the society under the Act for the encouragement of friendly societies, to have the money due from the bankrupt paid by the assignees.

The petition came on before Lord Rosslyn.

Mr. Benyon, in support of the petition.

Though there is no appointment of the bankrupt as treasurer in the books of the society, he was in the habit of receiving the money of the society from time to time, in which case your lordship has held that a person receiving the money from time to time is in the nature of a treasurer, and it is not necessary under the Act that he should be appointed. That is the only ingredient wanting in this case.

Mr. Pemberton, for the assignees.

It is not pretended that this bankrupt was either trustee or treasurer, or that he held any office. He was an attorney in the neighbourhood, in whose hands the stewards from time to time placed the money of the society, for which he gave them security. A prior clause in this Act authorises the treasurer or trustees to place out the money on private or Government securities. The clause, upon which this petition is presented, is expressly confined to money received by virtue of his office; and the intention clearly was, that only debts due by officers of the society should be preferred, not debts from people entrusted by them with the money.

Mr. Benyon, in reply.

This is not one act, but a constant habit, when any money was received, of paying it to these persons, and when it amounted to this sum of £145, a note was given.

Lord Chancellor: It was not a deposit of money and one note given, but it is admitted that it was regularly paid to them upon interest, they giving their notes. In order to make interest of the money they paid it to an attorney of character, taking interest notes upon it. I think the petition right.

Upon this judgment the order was made accordingly, that the assignees should pay to the stewards of the society the sum of £145. The other petition was afterwards presented, praying that the order might be discharged. That petition came before Lord Eldon.

Mr. Romilly and Mr. Pemberton in support of the petition.

Mr. Benyon (for the society): The late Lord Chancellor thought this case the same as *Ex parte* Askwith, and there have been several orders of the same kind, in which this has been considered equivalent to an appointment. Any person appointed to receive the money from time to time is treasurer for the time being.

Lord Chancellor: The question is a dry question of fact, whether the bankrupt was or was not the treasurer of this society. If he was not, it is clear the society had not against individuals, with whom their officers chose to deal, the extensive remedies given by this Act against persons holding offices under them. I do not recollect enough of the cases cited to be able to state the particular circumstances, but I apprehend from the order in *Ex parte* Askwith, and what is now stated, those decisions went upon this, as a fact proved to the satisfaction of the court, that they were to be considered as treasurers, that they were in fact treasurers, and in the order *Ex parte* Askwith there is an allegation that the bankrupt entered into the society as an honorary member, served the office of president, and accepted that of treasurer, under what circumstances does not appear. No particular mode of election is pointed out by the Act, but he is in fact to be elected, and you must collect from the circumstances whether he is constituted treasurer or other officer. Suppose the steward had distributed the money among all the bankers of this city, taking notes payable at a month's notice with interest. No doubt the legislature did not mean that there should be 1,500 treasurers, and yet the same argument would prove them all so. This is, therefore, not a question at law, but whether, under the circumstances, putting the money into the hands of the bankrupt, payable by a note at a month with interest, he is to be considered treasurer where there is no other. Upon my view of the Act it does not occur to me that this bankrupt either received or retained this money by virtue of any office, or that the circumstances of this loan, payable at a month with interest, will make him a treasurer, merely because no other treasurer was appointed; or that you shall imply upon the mere receipt of the money with such security, that he is a treasurer, either self-elected, or with the approbation of the society; for it would go this length, that everyone receiving the money would be treasurer, if no other was elected. The treasurer is to be the creature of election. A preceding clause of the Act has clearly contemplated this case. Under that clause if there was a treasurer, or, if not, a trustee, who laid out money upon private security of this sort, the persons would have the money in their hands; but the legislature confines the special remedy to the case of those, who have it, not as debtors merely, but in that character, and also as having charged upon them duties and trusts; for the clause giving this special and extensive remedy does not give it to those to whom the officers of the society have lent the money, but stops short. The eighth section is also material. If the relation in which this person stood to the society was formed by a security, in which they expressly stipulate that he shall not pay over the money upon demand, can the intention of the transaction be to place him in an office, the person exercising which the legislature has said shall pay it over on demand, upon whom therefore the society might, contrary to the stipulation of the note, call to have it paid over at a moment's notice? Observe the consequence in another respect. If benevolent persons should give these societies property, or if persons should withhold money which they had a right to demand, the society would under this construction of the Act be enabled to call upon this person as treasurer, and would file their bills, and defend their suits, in his name. He must therefore be a person elected, and accepting the office, and it is too much to say, a person, to whom their money is lent upon this sort of security, is *ipso facto* to become the treasurer by the fact of that loan, liable to the duties, inconveniencies, and obligations, imposed by the Act upon the officers. Therefore, not meaning to say the cases referred

to are not rightly decided, if the Lord Chancellor collected that the parties had accepted the office, however elected into it, it does not appear so to me, that it ever was the intention to constitute in this person the character of treasurer; and it is impossible to argue it so high from the mere fact of his becoming a debtor to the society, that he became an officer of the society; and then it is clear that they have not this remedy against him. Reverse the order, and let them prove the debt under the commission.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 35.

CASE 52.

COURT OF APPEAL.
Before THE MASTER OF THE ROLLS AND LORDS JUSTICES LINDLEY AND A. L. SMITH.

IN RE MILLER.

EX PARTE OFFICIAL RECEIVER.

Friendly Societies Act, 1875 (38 & 39 *Vic., cap.* 60), *sec.* 15, *sub-sec.* 7—*Bankruptcy Act*, 1883—*Preferential Payments Act*, 1888—*Treasurer Bankrupt—Indebted to Society—Preferential claim.*

Held that the society were entitled to be paid out of the assets of the bankrupt in preference to all debts or claims against his estate, even though he had not the money in his possession in specie and it could not be traced.

This case raised a very important question of special interest at the present time to members of friendly societies. The bankrupt (J. Miller) carried on business as a publican, and acted as treasurer of a friendly society, in which capacity he received subscriptions, &c., for the society. At the time of the bankruptcy the bankrupt was indebted to the society in respect of such moneys so received in the sum of £100 6s. 7d., but the money was not in his hands in specie, nor was it in a condition in which it could be followed in any banking account or earmarked. The bankrupt had absconded, and his entire available estate realised by the trustee amounted to something over £200. The question arising in this case was whether the friendly society was entitled to preferential payment before all other creditors of the debtor, or whether the society could only rank *pari passu* with the other creditors. The Divisional Court had held that the question had previously been before the courts in the case of "*Ex parte* Edmunds, *in re* Atkins, 46 *Law Times* Reports, 240, and decided in favour of the friendly society then interested by Vice-Chancellor Bacon, by which decision the court was bound. The present case was an appeal from the decision of the Divisional Court, the question really turning on the true construction of section 15, sub-section (7), of the Friendly Societies Act, 1875, by which, upon the death or bankruptcy of "any officer of a society having in his possession, by virtue of his office, any money or property belonging to the society, the trustee in bankruptcy shall, upon demand in writing, pay such money and deliver over such property to the trustees of the society in preference to any other debts or claims against the estate of such officer."

The Attorney-General (Sir Charles Russell, Q.C.) and Mr. Muir Mackenzie, who appeared for the Official Receiver in support of the appeal, admitted that previous to the Act of 1875, the course of legislation had been in favour of the preference, but it was contended that under that Act such preference no longer existed.

Mr. Herbert Reed, Q.C., and Mr. Mellor, appeared for the friendly society.

The Master of the Rolls said that a treasurer of a friendly society had been made a bankrupt and he had at the time of the bankruptcy some money. He had some book debts owing to him, and he had certain other property which, when realised in the bankruptcy, would produce money. The trustees of the friendly society said that they were entitled to so much of the money in the hands of the trustee in bankruptcy coming to him as the money of the bankrupt, to the extent of £100 6s. 7d., to be paid to them in preference. Whether they were so or not depended on the true construction of section 15, sub-section (7) of the Friendly Societies Act, 1875. It was contended against the claim of the society that it had no preference, because it could not say that the bankrupt had in his possession the money they claimed at the time of the bankruptcy. It was said that it was not in his possession according to the true construction of section 15, sub-section (7). If that contention prevailed, it was admitted that the whole course of legislation with regard to friendly societies was altered in 1875. The privilege in favour of the societies had existed from 1793. The question, therefore, was, did section 15, sub-section (7), of the Act of 1875, oblige the court to say that there had been that startling alteration in the views of the legislature? If it was not obliged to say so the proper conclusion of the court would be to construe the section so as not to alter the long course of legislation. Certainly when the matter under discussion was considered nobody could wish to alter it. Friendly societies were societies in which moneys were paid by poor people as a means of saving. If money so paid was to be treated as money in the hands of the officers in such a way as to give them credit on it, poor people who had no control over the officers would stand a good chance of being ruined. At a time when societies of this kind were crashing up, in many cases through the misconduct of their officers, the court would be very disinclined to take away the long course of favourable legislation unless it was absolutely obliged to do so. But even if sub-section (7) stood quite alone the court was of opinion that it did not take away the protection. The court was of opinion that it rather gave the protection. Upon the section itself it showed that the money which the trustee in bankruptcy was to pay by way of preference was treated, not as the actual money as pieces of gold, or silver, or copper, but as money in the ordinary sense. Therefore, if the bankrupt had money it did not say that it was to be the very same money which he received. Further than this, on looking at a previous part of the section, it said that friendly societies were to be entitled to a privilege. If the trustee had to hand over the specific money there would be no privilege. The money could not be touched by the creditors by the ordinary laws of trust. Beyond all this the larger meaning was given to the section in 1882 by the Chief Judge in bankruptcy, and since that decision the section must have been acted on in very many cases. That decision has never been challenged, and if, therefore, the section was reasonably capable of the construction put

on it, it ought not to be reversed unless it was clearly wrong. Since that decision two statutes had been passed—the Bankruptcy Act, 1883, and the Preferential Payments Act, 1888—in neither of which had anything been done with regard to reversing that decision. The court was of opinion that the decision was right, and, consequently, that the decision of the Divisional Court in the present case was right, and the appeal must be dismissed.

Lords Justices Lindley and A. L. Smith concurred.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic. cap.* 25, *sec.* 35.

CASE 53.

PLYMOUTH COUNTY COURT.

RE H. C. WELCH, A BANKRUPT.

1893. *Dec.* 1.

Friendly Society—Defaulting Treasurer—Preferential claim by Society admitted.

In the bankruptcy of Henry Cummings Welch (the absconding Penryn alderman), the Star of the West Lodge of Oddfellows (of which the bankrupt was secretary) moved to get their claim of £723, the amount of his defalcations, treated as a preferential one. His Honour (Judge Granger) has forwarded to the Registrar of Truro (Mr. J. G. Chilcott) his written judgment. His Honour orders that "the proof of the trustees of the Star of the West Lodge for £723 6s. 2d. (or for such sum as may be ascertained, if necessary) be admitted as a claim in preference to any other debts or claims," and that the costs of both parties be paid out of the estate.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic. cap.* 25, *sec.* 35.

CASE 54.

NORWICH COUNTY COURT.

1877. *Jan.* 18. *Before* MR. REGISTRAR COOKE.

TRUSTEES OF THE LOYAL AGINCOURT LODGE, M.U.I.O.O.F., *v.* J. M. WOODS, A BANKRUPT.

Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap.* 60), *sec.* 15, *sub-sec.* 7.—*Treasurer Bankrupt—Claim by Society for Payment of Moneys belonging to them in the hands of Debtor at the time petition filed in preference to any other debt.—Allowed.*

A motion was made by Mr. Simms Reeve, barrister-at-law, instructed by Mr. S. Linay (Sadd and Linay, solicitors, Norwich), on behalf of the Trustees of the Loyal Agincourt Lodge, No. 314, of the Manchester Unity Independent Order of Oddfellows, to order the trustee under the liquidation proceedings, instituted by one James Matthias Woods, of Wymondham, in the county of Norfolk, the treasurer of the lodge, *to*

pay, in preference to any other debts or claims against the estate of the said J. M. Woods, the sum of £90 15s. 6d., being moneys belonging to the lodge, and in the possession of the debtor at the time of his filing his petition.—Mr. W. S. Rackham (Coaks and Rackham, solicitors) appeared for the trustees of the debtor's estate.—Mr. Reeve called attention to the section 72 of the Bankruptcy Act, 1869, and section 15 sub-section 7 of the Friendly Societies Act, 1875, 38 & 39 Vic., c. 60, and contended that the order should be made, as also that the debtor's estate should pay the costs of and incidental to this application. After hearing Mr. Rackham on behalf of the trustee of the debtor's estate, the order was made that the £90 15s. 6d. and costs should be paid out of the first assets that came into the possession of the debtor's trustee under his liquidation.—A similar application was made by Mr. S. Reeve, again instructed by Mr. S. Linay (Sadd and Linay, Norwich), on behalf of the trustees of Loyal Wyndham Lodge, No. 2,904, of the Ancient Order of Foresters, the debtor having held the office of treasurer to that lodge, and received £130 7s. 4d. on account of the lodge, which sum was in his hands when he filed his petition for liquidation.— Order made as in the preceding case.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 35.

CASE 55.

TRUSTEES OF THE SHAKESPERE LODGE, M.U.I.O.O.F. *v.* GRAHAM.

MANCHESTER COUNTY COURT. 1877. *April* 8.

Friendly Societies Act, 1875 (38 & 39 *Vic., cap.* 60), *sec.* 15, *sub-section* 7—*Priority of claim on Death, Bankruptcy, or Insolvency of Officer—Treasurer Bankrupt—Sureties—Claim allowed.*

An action affecting the priority of claim, on death, bankruptcy, or insolvency of an officer of a friendly society having in his possession, by virtue of his office, any money or property belonging to a society (Friendly Societies Act, 1875 (38 & 39 Vic., c. 60), s. 15, sub-s. 7), was tried before the judge of the Manchester County Court on the 8th of April. The plaintiffs were the trustees of the Shakespere Lodge, Independent Order of Oddfellows Manchester Unity Friendly Society, and the defendant was Mr. Graham, the trustee of the estate of William Herd, the treasurer of the lodge. The sum in the hands of William Herd, at the time of filing his petition, amounted to £48 15s. 6d. At the first meeting of the creditors a demand was made, in accordance with the Act of Parliament, for the payment in full of the sum in the hands of the treasurer. At this meeting Mr. Graham was appointed trustee, and on application being made to him he refused to pay the claim, contending that the treasurer had not at the time of filing his petition such sum of money as that demanded in his possession. It was also contended that the bankrupt's sureties should be called upon to pay the demand in the first instance. The facts of the case were stated to the judge by Mr. Cobbett (Messrs. Cobbett, Wheeler, and Cobbett), and the clause of the Friendly Societies Act having been read, which stipulates that a friendly society has preference to any other debts or

claims against the estate of a bankrupt, &c., the judge said he entirely agreed with Mr. Cobbett's version of the Act, and without calling upon any case to prove his argument, ordered that the claim be paid over to the trustees of the lodge. The judge said that the trustees of the lodge were quite right in making the application, and that the sureties would have had cause of complaint upon the trustees if they had not taken this action to get the money from the estate of the liquidating bankrupt.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 35.

CASE 56.

WESTMINSTER, 1839. *Jan.* 26. SIR J. CROSS, SIR G. ROSE.

EX PARTE JAMES RAY AND OTHERS. IN THE MATTER OF MARY WOODLIFFE.

Friendly Society—Treasurer—Bankrupt—Preference —10 *Geo. IV., cap.* 56; 4 *& 5 Wm. IV., cap.* 40, *sec.* 12.

On the appointment of the bankrupt as treasurer of a friendly society, it was agreed that of the funds then in hand she was to pay interest for £120. *Held* that this was not to be considered as a loan to her; but that it was in her hands and possession by virtue of her office of treasurer, within the meaning of the 4 & 5 Wm. IV., c. 40, s. 12, and that the assignees were bound to pay over the amount to the society.

This was the petition of the members and stewards for the time being of a friendly benefit society, called "The Liberal Society," established at Pontypool, in Monmouthshire; and it prayed an order on the assignees to pay over to the petitioners the sum of £153 4s. 10d., under the circumstances stated in the petition, which were as follows:—

The society was established in the year 1792, and the rules of the society were afterwards duly enrolled, pursuant to the provisions of the 33 Geo. III., c. 54. On the 3rd September, 1829, the bankrupt was appointed treasurer of the society, and had then in hand the sum of £149 8s. 9d., and out at interest the sum of £50. At the time of her appointment the following resolution was entered into by the society:—"That she, the said Mary Woodliffe, is to have the sum of £149 8s. 9d., of which she is to pay interest for £120." On the 7th September, 1829, the bankrupt, pursuant to the requisitions of 10 Geo. IV., c. 56, entered into a bond, with two sureties, to the clerk of the peace, in the sum of £300 for the just and faithful execution of the office of treasurer. The bankrupt continued to fill that office until her bankruptcy, which took place in November, 1837, at which time she was in possession of £153 4s. 10d. belonging to the society, including the £50 out at interest when she became treasurer.

Mr. Swanson appeared in support of the petition.

Mr. J. Russell and Mr. Wm. Rose *contra.*

Sir John Cross: This seems to me a very clear case, and I think that the commissioners have done wrong in rejecting the claim of the petitioners. It is admitted that the bankrupt held the office of treasurer of this society, but it is contended that she did not hold the £120 as treasurer. It becomes material, therefore, to see the terms on which this money was intrusted to her custody. It appears that on the appointment of the bankrupt to the office of treasurer, the funds of the society amounted to £149 8s. 9d., of which sum it was agreed that she was to "pay interest for £120." Now, her appointment as treasurer, and her agreement to allow interest for this sum, were contemporaneous acts, and it cannot be said that the £120 did not come to her hands *by virtue of her office or employment* as treasurer.

But then it is contended that the agreement to pay interest makes a difference in the case, and shows that this portion of the money intrusted to her was to be considered as a loan. It appears to me, however, that the legislature did not contemplate that the money in the hands of the treasurer was to be locked up in a chest, but that it should be deposited with the treasurer in the same manner as with a banker. And I see nothing in the case which rebuts the presumption that the whole of the money was in her hands and possession by virtue of her office of treasurer.

Sir George Rose concurred.

Ordered as prayed, but without costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 35.

CASE 57.

LONDON BANKRUPTCY COURT.
1882.
Mar. 6.
BACON, V.C.

EX PARTE EDMONDS *RE* ATKINS.

Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap.* 60, *sec.* 15)—*Preferential claim—Bankruptcy of Treasurer—Claim allowed.*

This was an appeal from the decision of the judge of the Salisbury County Court, and involved an important point as to whether the officers of a friendly society were entitled to be paid their claim, in preference to the claim of the other creditors, in a failure where the bankrupt was the treasurer of the society. Mr. Lang appeared for the trustees; Mr. Finlay Knight for the respondent. The facts were shortly as follows: The debtor, who was a wine and spirit merchant, of Salisbury, and was also the treasurer of No. 3,587 Lodge of the Manchester Unity of the Independent Order of Oddfellows Friendly Society, failed in September last with debts, secured and unsecured, of £1,800, and assets £493. At the first meeting resolutions were passed for the liquidation of the estate by arrangement, with Mr. Edmonds, accountant, Cheapside, as trustee, and a committee of inspection. At the time of the failure, the debtor was in the possession of the friendly society's funds to the extent of £43 odd, as treasurer of the society, which the officers of the society claimed to be paid in preference to the other creditors; and upon the case coming on in the court below, the judge

ordered the money to be paid in preference to the other creditors, and the order was the subject of the present appeal. His lordship, after hearing Mr. Lang, without calling upon Mr. Knight, was of opinion that the question was amply settled by the Act of Parliament. From the earliest time claims of this kind were held to be preferential claims, and were always treated as such; and the present Act also provided that they should be treated in the same way. In this case the money in question was the money belonging to the society, of which the debtor was the treasurer, and he had admitted that to be so, and the present Act provided that the trustee should under such circumstances pay such a claim preferentially to the other creditors. The County Court Judge was of that opinion, and he (the Chief Judge) must dismiss the appeal, with costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 35.

CASE 58.

1842.
Dec. 5.
V.C.
KNIGHT BRUCE.

EX PARTE RIDDELL.

Treasurer—Sureties—Payments direct to a Banking Company of which Treasurer is a partner—Bankruptcy—Preference.

The treasurer of a savings bank on his appointment enters into the usual bond for the performance of his duties, but does not receive any money, the deposits being paid by the managers direct to a banking firm, of which the treasurer is a partner, to the credit of the trustees of the savings bank who are allowed interest upon it, but he, notwithstanding, signs the return (required by the Act) to the Commissioners for the Reduction of the National Debt, and thereby acknowledges the amount of the balances standing to the credit of the trustees to be moneys in his hands as treasurer. The firm became bankrupt.

Held that the balance was in the hands of the treasurer, as treasurer at his bankruptcy, and might be recovered in full by the savings bank.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 35.

CASE 59.

HIGH COURT OF JUSTICE.
CHANCERY DIVISION.
1896.
Oct. 29.
CHITTY, J.

RE ABERDEIN'S ESTATE.
HAGON *v.* ABERDEIN.

Friendly Society—Preferential Payment—Friendly Societies Act, 1875 (38 & 39, *Vic. cap.* 60), *sec.* 15, *sub-sec.* 7—*Officer having in his possession moneys of the Society by virtue of his office—Secretary—Unauthorised receipt of money by.*

This was an application by the trustees of an Oddfellows lodge for a declaration under the Friendly Societies Act, 1875, section 15,

sub-section 7, to the effect that they were entitled to receive certain sums out of the estate of the above-named deceased testator in priority to other creditors. The section referred to provides that upon the death, or bankruptcy or insolvency of any officer of a friendly society having in his possession by virtue of his office any money or property belonging to the society, such money and property shall be paid and delivered over to the trustees of the society in preference to any other debts or claims against the estate of such officer. It appeared that the deceased was duly appointed secretary of the lodge, and had acted in that character for many years prior to and up to his death. During his tenure of office he had received various sums belonging to the lodge, and after his death a very large sum was found to be due from him to the lodge. He had died insolvent.

Lodge rules 6 and 7 provided for the appointment and defined the duties of the treasurer. Rule 8 defining the secretary's duties provided that the secretary should attend all the meetings of the lodge, take minutes of the proceedings and keep the accounts, prepare and deliver all summonses, attend the auditors to explain the accounts, balance such accounts when required, prepare all documents for the district and Board of Directors and the Statutory Returns; and should receive a salary.

It was contended for the general creditors that section 15, sub-section 7 of the Friendly Societies Act, 1875, did not apply, inasmuch that the deceased did not receive any money or property of the lodge into his possession by virtue of his office.

Mr. Levett, Q.C., and Mr. Charles Macnaghten appeared for the applicants, the trustees of the lodge; and Mr. Byrne, Q.C., and Mr. Micklem for the deceased's legal personal representatives.

Mr. Justice Chitty said that the question was whether the deceased had received the moneys of the lodge by virtue of his office. The moneys he had received were sums representing ordinary debts, members' subscriptions, and sums paid to him by another officer—namely, the treasurer. The duties of the secretary were defined by the rules of the lodge, and the receipt of any of the moneys in question formed no part of his functions. The rules, in fact, provided for their receipt by another officer—namely, the treasurer. There was only one way in which the lodge or friendly society could confer on an officer authority to receive its moneys—that was, by its rules. Inasmuch as the rules did not justify the secretary in receiving the moneys, he had not received them by virtue of his office within the meaning of the Act of Parliament. The words by virtue of his office meant by virtue of his office according to the constitution of the society. The question was covered completely by the decision of Vice-Chancellor Knight Bruce in "*Ex parte* Fleet" (4 De G. and Sma., 52). The moneys of the lodge received by the deceased were received by him as servant or agent of some person, but were not received by the deceased officially as a person appointed for the purpose by the lodge or society. The trustees of the lodge were not entitled to priority under the circumstances.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 35.

On December 17th, 1896, this case in which an appeal against the decision of Chitty, J. *(ante)* had been presented on behalf of the plaintiffs was mentioned to the court (Russell, L.C.J., Lindley, L.J., and Smith, L.J.)

Mr. N. Micklem (Mr. E. W. Byrne, Q.C., with him), for the defendants, stated that their clients had received notice from the appellants that they did not intend to prosecute their appeal; and he asked that the appeal should be dismissed with costs.

Their lordships made the order asked for.

In an embezzlement case heard on August 12th, 1896, at Hartlepool, the magistrates gave a warning against the subscriptions of members of friendly societies being paid at the secretary's own private residence instead of being paid to the officials awaiting to receive them in the lodge room.

CASE 60.

EX PARTE FLEET IN THE MATTER OF JARDINE.

CASES IN CHANCERY. 1850. *Aug.* 2. V. C. KNIGHT-BRUCE.

A linen draper was appointed actuary and cashier of a savings bank, the rules of which provided that one or more members of the committee should attend at the cashier's shop to receive the deposits. The committee failed to attend, and permitted the deposits to be received by the cashier. *Held*, upon his bankruptcy, that they were not moneys in his hands by virtue of his office, and could not be claimed in full by the savings bank.

Statutory provisions giving preference to particular creditors must be strictly construed.

The bankrupt was a linen draper at Dartford, and having been appointed actuary and cashier of the Dartford Savings Bank in 1816, had continued to act in that capacity down to the time of his bankruptcy. It appeared that at the time of his bankruptcy £2,206 16s. 11d. had been received by him as actuary and cashier of the bank, and that he had not accounted to the trustees for this sum.

The rules of the savings bank provided as follows :—"That the bank shall be open for receiving deposits of not less than 1s. at a time, subject to the restrictions hereinafter contained, on Saturday in every week, from the hour of 11 o'clock in the forenoon to one o'clock in the afternoon, or at such other hours as shall from time to time be thought convenient at the house of Mr. Jardine in Dartford, or at such other

convenient place as shall be appointed by the officers and committee, of which due notice shall be given, when the committee, or some one or more of them, according to a rota to be settled between them, shall attend to *receive deposits* and pay money out."

It appeared that notwithstanding this rule no member of the committee attended when the deposits were paid, but that the bankrupt received them without regularly entering them in the books of the savings bank.

The trustees claimed payment in full of £2,206 16s. 11d., being the amount due from him in respect of the deposits, but the commissioner rejected the claim. This was an appeal on behalf of the savings bank from his decision.

Mr. Russell and Mr. Tripp for the appellants.—The 3 & 4 Wm. IV., c. 14, s. 28, enacts, "That if any person appointed to any office in a savings bank, and having in his hands or possession, by virtue of his said office or employment, any moneys belonging to such savings bank, shall become bankrupt, his assignees shall pay out of his assets all such sums before any other debts are paid." That provision exactly applies to this case. They also referred to 7 & 8 Vic., c. 83, s. 4, and *Ex parte* Ross and *Ex parte* Riddell.

Mr. Bacon and Mr. C. Barber, for the assignees, were not called upon.

The Vice-Chancellor: The case does not present any difficulty. The Act 3 & 4 Wm. IV., c. 14, s. 28, applies only to money received by an officer by virtue of his office, and, being against common right, must be construed strictly. It appears, however, that the bankrupt was only actuary and cashier, and that the duties attached to that office did not include the receipt of money, for one of the rules provided that a member of the committee should attend at the house of the bankrupt for the purpose of receiving the deposits. This duty was not fulfilled by the committee, who either abandoned their duty altogether or delegated it without authority. The consequence was that their servant, the bankrupt, acted dishonestly. It is impossible to say that the regulations made the receipt of money part of the duty of the actuary. The money may have been received by him as the servant of some person or persons, but not officially as a person appointed for the purpose by the institution.

The petition must be dismissed with costs.

CASE 61.

ROMILLY, M.R.
1863.
Jan. 15th, 16th.

ABSOLUM *v.* GETHING.

Friendly Societies Act, 18 & 19 *Vic., cap.* 63—*Defaulting Treasurer—Trustees—Priority of Claim.*

If a treasurer of a friendly society makes an assignment of his estate and effects to trustees for the benefit of his creditors, the circumstance that the trustees of the society have been guilty of negligence in not auditing the accounts, does not deprive the

society of the right conferred by the 18 & 19 Vic., c. 63, to recover out of the estate of the treasurer what is due from him to the society in priority to his general creditors.

The service of a bill filed in this court to compel payment of what is due from the assignees of a treasurer of a friendly society is a demand in writing, within the meaning of the 18 & 19 Vic., c. 63, s. 23.

The plaintiffs, as trustees of the Female Benefit Society, held at Lower Croesy Ceilog, in the county of Monmouth, filed this bill, against George Gething and William Conway, to obtain payment of a sum of £400 13s. 2d., moneys of the society.

This society was formed under the provisions of the 10 Geo. IV., c. 56, as amended by the 4 & 5 Wm. IV, c. 40, the object being to provide funds for the support during sickness of the members of the society, and towards defraying the funeral expenses of members at their decease.

On the 8th of December, 1840, rules were adopted for the government of the society, at a general meeting, which were afterwards duly certified and enrolled at the sessions.

At the same general meeting William Conway James was appointed the treasurer of the society, and he continued to hold the office until the 31st of May, 1861, at which time he had in his hands the £400 13s. 2d. belonging to the society.

On the 31st of May, 1861, he executed a deed assigning all his property to the defendants as trustees for the benefit of his creditors.

By the 18 & 19 Vic., c. 63, the law relating to friendly societies was consolidated and amended, and by section 5, previously subsisting societies are to enjoy all the exemptions and privileges conferred on societies established under that Act . . . . . .

On the 19th of June, 1861, the plaintiffs, as two of the stewards and trustees of the society, gave the defendants notice in writing of the fact that W. C. James, as treasurer of the society, had in his hands £400 13s. 2d., and they demanded payment in priority to all his other debts.

At that time the plaintiffs were not actually the trustees of the society; but they were duly appointed such trustees in accordance with the rules of the society on the 13th May, 1862, and their appointment was forwarded to the Registrar of Friendly Societies, and registered pursuant to the 18 & 19 Vic., c. 63.

This bill was filed shortly afterwards.

The defendants resisted the claim made by the bill upon the following grounds: first, that no notice had been given to them in writing by persons properly trustees of the society. Secondly, that on the appointment of W. C. James to the office of manager, it was provided that he was only to continue during the pleasure of the society upon his giving security to the clerk of the peace for double the sum that might from

time to time be placed in his hands by the society (10 Geo. IV., c. 56, s. 11). That it was not till the 7th of January, 1853, that any such bond had been required, and that in consequence he was not the treasurer of the society, within the meaning of the Acts. Thirdly, that the retention of the fund by W. C. James had been sanctioned by Thomas Williams, the secretary; and that the money ought to be treated as due from him on loan, and not as due from him as treasurer. Fourthly, that the trustees had omitted to audit the accounts, and that in consequence of that omission W. C. James had been able to retain the money in his hands.

Mr. Hobhouse and Mr. Jessel claimed priority under the Act.

Mr. Baggallay and Mr. Whitbread for defendants.

The Master of the Rolls said the plaintiffs were entitled to a decree. The defendants contended that the plaintiffs were not entitled to the benefit of the 18 & 19 Vic., c. 63, s. 23, because there were no trustees of the society, and because no demand had been made in writing. A deed, however, had been produced, which placed the plaintiffs in the position of trustees before the bill was filed, and the bill itself was demand in writing; no time was named in particular for making such demand. It was also said that the treasurer never gave security for the money in his hands until the 7th of January, 1853; that he was not duly qualified; and that the society's neglect had deprived them of all the advantage to be derived from the Act. It was, however, clear that he was the duly appointed treasurer from the time he gave security up to the time when he executed the assignment for the benefit of his creditors. It was further said, that he had borrowed the money of the society, and that it was not in his hands as treasurer. There was, however, no evidence to support this statement, and the secretary said it never had his sanction.

As to the argument founded on the alleged neglect on the part of the trustees, the 18 & 19 Vic., c. 63, nowhere said the misconduct of the trustees was to deprive the society of the remedies given to it by the Act for the recovery of their money against the estate, assets and effects of the treasurer. It assumed that there had been improper conduct when the treasurer, instead of paying the money into the savings bank, retained it in his hands. The legislature had thought fit, where a number of poor persons were concerned, to say that they should have priority over the other creditors of their officer. All persons, therefore, who dealt with the treasurer knew, or they must be taken to have known, that such was the law, and that his estate was mortgaged to the full amount of what was due from him to the society in priority to all other demands. It could not be said that this was unfair or improper; still at the same time it was true that the Act must be construed strictly. The defendants charged the society with neglect, and said that it had omitted to audit the accounts, and that they were satisfied with such information as it had pleased the treasurer to give them; but assuming this, and that they had placed confidence in the treasurer, still they had not lost the advantage given to them by the 18 & 19 Vic., c. 63. The result, therefore, is that the assets and effects of the treasurer were and must be charged with the money which was due from him when he executed the deed of assignment to the defendants. They must therefore pay the amount to the plaintiffs, with the costs of the suit; and the defendants must be at liberty to retain their costs out of the estate of which they were trustees.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 35.

CASE 62.

HILL *v.* HART DAVIES.

CHANCERY DIVISION 1882. *July* 12, KAY, J.

Injunction—Libel—Privilege—Friendly Society—38 & 39 *Vic., cap.* 60, *sec.* 23.

An injunction can be granted to restrain a libel likely to injure a friendly society or a joint stock company.

A member of a friendly society issued to persons not members of the society circulars containing inaccurate statements as to the financial condition of the society.

Held that such circulars ought to be restrained by injunction.

This was a motion on behalf of the trustees of the Independent Mutual Brethren Friendly Society to restrain the publication of a libel. This was a society registered under the Friendly Societies Act, 1875, and under that Act was subject to a quinquennial valuation of its financial condition which was made, the result showing an estimated deficiency of £147,325. But it appeared from the affidavit of the general secretary, and the court was satisfied upon the evidence, that since the date of the quinquennial report the society had taken successful steps to place their funds on a better footing.

The defendant, an honorary member of the society, issued a circular to the clergy of several parishes where the society had branches, in which he stated: First, that while the society had been in existence its total available funds were less than £7,000; secondly, that it had an estimated actuarial deficiency of £147,000; thirdly, that the management fund was largely indebted to the benefit fund.

The plaintiffs complained that the defendant circulated these statements throughout the country, which represented a state of things which, though true in December, 1880, was false when the defendant issued the circular in June, 1882, and that unless the defendant was restrained from continuing to issue the circular great and irreparable injury would be caused to the society.

In his affidavit the defendant stated that a great many of his poor parishioners were members of the society, and he took an interest in its position on their account. On discovering the position of the society and that it could bring (with few exceptions) nothing but ruin upon his parishioners, he felt it his duty to press for an investigation, and with that view he had issued the circular.

Mr. Cookson, Q.C., and Mr. Colquhoun for the motion.

Mr. J. Pearson, Q.C., and Mr. Northmore Lawrence for the defendant.

Kay, J.: This motion seeks to restrain the defendant from issuing a certain circular concerning the society. I assume that he is a member of the society. I assume that his object in issuing the circular was to obtain that kind of valuation and estimate of the position of the society which may be obtained under the 38 & 39 Vic., c. 60, s. 23; and I assume (and I confess I think it would be so) that if he were to issue a

circular for that purpose for distribution among the members containing no inaccurate statement as to the position of the society he would be acting perfectly within his rights, and the court would not restrain him. The purpose of issuing the circular is plain. It is to obtain a sufficient number of signatures of members through the agency of clergymen of different parishes of England to enable the writer to get the Chief Registrar to make an investigation under the section of the statute to which I have referred. The purpose is quite a proper one. The letter is not otherwise than proper except in this respect, that some of the statements are statements not based upon any examination of the actual position of the society, of which it is not pretended this gentleman has any knowledge, but they are statements which are based upon the last quinquennial report, which stated what was the condition of the society in December, 1880, and upon the evidence before me, as I have already said, these statements are not accurate as applied to the condition of the society at the present time.

Now the law is beyond all question. Supposing that this gentleman is entirely in order and regular and within the law as to privilege in writing to his brother members of the society; first of all I observe that this circular is not addressed to the members of this society, it is addressed to clergymen of different parishes in England, who may not be members of this society; in the second place, I cannot find the least warrant for making these statements as representing the actual condition of the society at this time. The evidence before me shows that the condition of the society is not worse, but that it is better than in 1880, and if this gentleman were to go on issuing this circular after the knowledge as to the position of the society which he has now acquired, he would be doing that which the law condemns. He would undoubtedly be libelling this society, and whether he accomplished his object of having a meeting or not, he would most seriously damage the society itself by the means which he is taking for a different purpose. As to the law, I have no doubt whatever about it. It seems to me that it is perfectly settled that any libel which is calculated to injure another man in his trade, or a trading company, will be restrained by injunction, and although there has been, it is said no reported case which applies that law to and practice to a friendly society or joint stock company, I have not the least doubt that it is applicable to the case of a friendly society or joint stock company as it is to an individual trader, because everybody who has the least knowledge of what goes on in the world, and particularly of what goes on in Courts of Justice, must be perfectly well aware that nothing is more sensitive to evil report and to false statements than a society like a friendly society or a joint stock company, and if a libel against an individual trader which may injure him in his business can be and ought to be restrained by injunction, then it seems to me *a fortiori*, that a libel likely to injure a society like this in its business should also be restrained by injunction.

In what I have said I have given credit to this gentleman for perfectly legitimate motives in all he did up to the commencement of this action; but if he were now to go on issuing this circular, containing statements which are now proved to my satisfaction, in his presence, to be false, he would be doing that which the courts always consider takes any communication out of the region of privilege. I will read from the edition of "Addison on Torts," recently edited by Mr. Justice Cave. It is there stated: "Whether the circumstances under which a communication was

made constitute it a privileged communication or not is a question which the court has assumed the jurisdiction of determining ; but if there is any dispute about those circumstances, the question must be submitted to a jury. It is essential to the existence of the privilege and protection that the communication, under whatever circumstances made, should be believed to be true by the party making it; for a person cannot shelter himself under the privilege if he believes the charge imputed untrue, unless he at the same time declares his belief in its untruth. If a man knowingly make a false charge, there is at once actual malice, and the privilege is blown to the winds." I adopt that statement, and concur in it entirely ; and if this gentleman were to go on publishing this circular after the knowledge which he and I have both acquired by what has taken place in court, he would come within the sentence which I last read, and he would be guilty of actual malice, and the privilege could not possibly exist. I have, therefore, no hesitation in saying that I consider it the duty of the court (and I am sorry he has thrown this duty upon me by refusing to give an undertaking) to grant an injunction restraining the further issuing of this circular, and I shall add these words, "or any other circular or letter containing false or inaccurate representations as to the credit or financial condition of the said society."

CASE 63.

QUEEN'S BENCH DIVISION.
BLACKBURN, J.
LUSH, J.
FIELD, J.
1876.
May 5.

ROBERTS *v.* PAGE AND ANOTHER.

Friendly Society—18 & 19 *Vic.*, *cap.* 63, *sec.* 19—21 & 22 *Vic.*, *cap.* 101, *sec.* 7—*Proceeding touching the right of Society—Action against Secretary.*

By the Friendly Societies Act, 18 & 19 Vic., c. 63, s. 19, the trustees of any society are authorized to bring or defend any action, suit, or prosecution in law or equity touching or concerning the property, right, or claim to the property of the society.

By section 7 of 21 & 22 Vic., c. 101, in any proceeding under this Act or the above Act against a society, it shall be sufficient to make the secretary or other officer of the society, at the time of the plaint or complaint, the defendant. Proceedings having been taken by a member of a society in a County Court to enforce a claim against the society, a compromise was come to between the plaintiff, the solicitor of the member, and the society, by which, *inter alia*, the society promised to pay the plaintiff certain costs and charges. These costs and charges not having been paid, the plaintiff sued the secretary of the society in a superior court.

Held that this was a proceeding within section 19, touching the right of the society, and was properly brought against the secretary under section 7.

Action against J. F. Page, secretary of the Eye and West Suffolk District of the Ancient Order of Foresters Friendly Society, and W. Baker, secretary of Court Brave Old Oak, No. 3,658, held at Mendlesham,

a branch of the said Ancient Order of Foresters Friendly Society, established in pursuance of the statutes relating to friendly societies, the rules of which society have been duly certified by the Registrar of friendly societies in England; that before, at the time of the making of the agreement hereinafter mentioned, one, T. Hipperson, being a member of the society, had preferred a claim before the appeal committee thereof, and, upon the neglect and refusal of the said committee to hear the claim, had, according to the statute in that behalf, made an application for relief against the said society to the County Court of Suffolk at Stowmarket, and had employed the plaintiff to act as attorney and solicitor on his behalf in and about preferring the said claim before the said committee, and in and about making and conducting the said application to the said County Court and transacting all necessary and proper business in connection therewith, and the plaintiff acting as such attorney and solicitor aforesaid had incurred divers costs and expenses in and about preparing the said claim and conducting the said application as aforesaid. Whereupon it was agreed by and between the plaintiff and the society that, in consideration that the plaintiff would advise Hipperson to withdraw from the application to the County Court, and would procure a stay of proceedings therein, the aforesaid claim of Hipperson should be forthwith heard by the committee of the society, and that the society would pay the costs and expenses then already incurred by the plaintiff in and about preferring the claim before the committee as aforesaid, and so much of the costs and expenses so incurred in and about conducting the application to the County Court as should be ascertained and found to be payable upon a taxation as between party and party. The plaintiff did so advise Hipperson to withdraw from the application to the County Court, and did procure a stay of proceedings therein. And a taxation was duly made as between party and party in respect of the costs and expenses as agreed. Breach, non-payment of the £25 14s. 3d., the amount of such costs, &c.

Second count, repeating the allegations contained in the first count so far as they relate to the circumstances existing before and at the time of the making of the agreement therein mentioned. That thereupon it was agreed between the plaintiff and Arthur Frederick Vulliamy, on behalf of the society, as follows:—

"Debenham, Suffolk,

"November 18, 1874.

"A. F. Vulliamy, Esq., Ipswich.

(Hipperson *v.* Foresters Friendly Society.)

"Dear Sir,—I have received and am obliged for your letter of the 17th inst. I have no wish to take this case into court if we can come to a satisfactory arrangement without. My client is a very poor man, and has been put to very heavy expenses; and if you will agree to pay my counsel's fees, with brief, which are already incurred, and my costs of attending the appeal committee of Mendlesham, with my client, Mr. Hipperson, on the 26th August last, and the costs as between party and party; and also undertake that the case shall be forthwith heard, I shall be happy to stay further proceedings. I will come over to Ipswich by the first train to-morrow morning from Stowmarket, and hope to be with

you about half-past 10; but as it is market-day at Stowmarket, must return very shortly, and hope your client will be in the way and a satisfactory arrangement completed. This letter is without prejudice.

"Yours truly,

"OSCAR W. ROBERTS."

"Ipswich, Nov. 19th, 1874.

"W. Roberts, Esq., Solicitor, Debenham.

(A. O. F. *v.* Hipperson.)

"I have seen my clients this morning, and they have instructed me to consent to your letter of the 18th inst. The appeal will be heard within three weeks, of which your client will have due notice.

"Yours truly,

"A. F. VULLIAMY."

This count then concluded like the first. Demurrer and rejoinder.

Mr. Mereweather in support of the demurrer. It is only by force of the Friendly Societies Acts that an officer of a society can be sued. By section 7 of 21 & 22 Vic., c. 101, "In any proceeding under the said recited Act (18 & 19 Vic., c. 63) or this Act, against a society, it shall be sufficient to make the secretary or other officer of the society, at the time of the plaint or complaint being entered or made, the defendant in such proceeding, by his name and the title of the office he holds in the society . . . " that refers only to plaint or complaint, and not to an action. By section 19 of 18 & 19 Vic., c. 63, "The trustees of any such society, are hereby authorised to bring, or defend, or cause to be brought or defended, any action, suit, or prosecution in any court of law or equity, touching or concerning the property, right, or claim to property of the society for which they are such trustees; and such trustees shall, in all cases concerning the real or personal property of such society, sue and be sued, plead and be impleded, in any court of law or equity, in their proper names, as trustees of such society, without any other description . . . . ." It will be argued for the plaintiff that the secretary is substituted for the trustees by section 7 of the second Act; but that is not so, section 19 remains, and applies to actions, while section 7 applies to proceedings in the County Court and before justices. But even if the secretary is to be taken as substituted for the trustees, this is not such an action as is contemplated by section 19; for it simply relates to a contract compromising a law proceeding, and does not touch or relate to the real or personal property of the society. [Lush, J.: It is an action relating to the right of the society; the words are, "Any action . . . touching or concerning the property of the society."] "Right or claim to property" means right to property or claim to property, which this is not.

Mr. Loyd, for the plaintiff, was not called upon.

Blackburn, J.: I am of opinion that there must be judgment for the plaintiff. The friendly society had entered into a contract for the compromise on equitable terms of a pending proceeding against them. The plaintiff sues on that contract, being the attorney for the member

who had commenced the proceedings against the society. Nothing is stated to show that the client might not have sued the society. The question is, how is the plaintiff to enforce the agreement? The friendly society is constituted under the statute, and by the enactments of the statute it is not everything that the society can do; but there are certain matters included in which the society has a concern, either relating to property or by which it is liable to have its funds taken away. By 18 & 19 Vic., c. 63, s. 19, "the trustees of such society are authorised to bring or defend any action, suit, or prosecution in any court of law or equity, touching or concerning the property, right, or claim to property of the society; and such trustees shall and may, in all cases concerning the real and personal property of such society, sue and be sued in any court of law or equity in their own names." It seems to me that in this action the society is interested in a contract in which the right to property is concerned, and that is not a matter *ultra vires*. Then section 7 of 21 & 22 Vic., c. 101, says that in any proceeding under the recited Act or this Act against a society, it shall be sufficient to make the secretary or other officer the defendant. Is an action which would lie against a trustee under the first Act a proceeding under that Act? I think it is; and it is unnecessary to enquire whether this would be a proceeding under the second Act. Judgment must, therefore, be for the plaintiff.

Lush, J.: I am of the same opinion. Certain contracts are competent to the society to make. The employment of a solicitor seems to be contemplated by sections 19 and 24. How is he to recover his costs? Surely he is not to be left without a remedy. Practically it would be so, if he must sue every individual member. It must have been the intention of the Act to do away with this difficulty, and to enable him to proceed against the officer of the society. It seems to me that the terms of section 19 are wide enough to include the present case. "Right" means something beyond "property," or "claim to property."

Field, J.: It seems to be established that this contract was one which the society might lawfully enter into. The society is a fluctuating body, and such body having entered into the contract, the legislature, to prevent the injustice which would ensue if there was nobody who could be sued but the members of the society at large, has given facilities by naming persons who may sue or be sued, viz., the trustees under the first Act, for which the secretary or other officer is substituted in the second Act. And they are to bring or defend any action touching or concerning the property, right, or claim to property of the society. The question is whether that goes far enough to include the present case. The property of the society might certainly be affected in the present action; and, therefore, I think the action is rightly brought against the officer.

Judgment for plaintiff.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 60, *sec.* 94.

CASE 64.

COURT OF COMMON PLEAS.
1867.
Wednesday, Nov. 13.

SHEA *v.* THE UNITED SICK AND BURIAL SOCIETY OF ST. PATRICK.

Prohibition—County Court—Usual and principal place of business—Affidavit—Friendly Societies Act, 18 & 19 *Vic., cap.* 63, *sec.* 41.

The 41st section 18 & 19 Vic., c. 63, provides a remedy for disputes under the rules of a friendly society, after an arbitrator has allowed forty days to elapse from the making of the claim without giving his decision, in the County Court of the district within which the usual or principal place of business of the society shall be situate.

Application was made to the court for a prohibition to restrain the plaintiff from proceeding against the defendants in the Bloomsbury County Court on the grounds, as stated in an affidavit by the defendants' secretary, that the defendants' usual and principal place of business was at Liverpool, and that the defendants were willing to settle the dispute by arbitration.

Held that the affidavit did not show sufficient cause for the interference of the court, and that even if the breaches of the Act had been more fully alleged, they would have been questions of fact which might be considered by the County Court itself on a plea to its jurisdiction, and were not grounds for a prohibition.

Plaintiff commenced an action in the Bloomsbury County Court of Middlesex against the defendants for £16, the amount of a policy alleged to have been effected by her late husband, as a member of defendants' society.

The rules and tables of the defendants' society have been duly certified under the Friendly Societies Acts.

The usual and principal place of business of the said society is situate in Liverpool, and not within the jurisdiction of the County Courts of Middlesex, and the cause of action did not arise within the district of the said Middlesex County Courts.

By the rules of the society, disputes were to be settled by arbitration, pursuant to 18 & 19 Vic., c. 63.

These facts were stated in an affidavit by the society's secretary, but no evidence was produced that the society had no usual office in London, and although it was stated that the defendants were willing to settle the dispute by arbitration, there was no allegation that the time required by the Act had elapsed since the claim had been made.

Mr. Morgan Lloyd moved for a prohibition to restrain the plaintiff from proceeding against the society in this action: I submit that the plaint ought to have been issued from the Liverpool County Court, and that there is no jurisdiction in London. [Bovill, C. J.: The affidavit should allege that the defendants have no usual place of business in London, as well as that their usual and principal place is in Liverpool.]

The words of the Act are not "an usual place" but "the usual or principal place."

In the case of Brown *v.* London and North Western Railway, 11, W.R. 884, it was held that a railway cannot be said to carry on business at any place other than at their principal office, and they cannot, therefore, be properly sued in the County Court of a district where they have a large but not their principal station.

This was also held in Minor *v.* London and North Western Railway Company, 1 C.B.N.S. 325. Next, this is not a case within the jurisdiction of the County Court at all. It is a matter which might be settled by arbitration, and the defendants are quite ready to have the question decided by that means. It is only when an arbitrator fails to make an award in forty days after the claim has been put in that the claimant may apply to a County Court.

Bovill, C. J. : I am of opinion that this rule should not be granted. The first ground relied upon for a prohibition against this case being proceeded with in the County Court was that the usual and principal place of business of the society is at Liverpool, and not within the jurisdiction of the Middlesex County Courts ; but there is no allegation that the society has no usual place of business within the district of these courts. The language of the Act is, that application can be made to the County Court of the district in which the society have their "usual or principal place of business ;" and the reason for altering in the affidavit the disjunctive to the copulative conjunction may be the fact that the society has an agent with an usual office or branch in London ; I think that would have been an "usual place of business" within the meaning of the Act. There is, therefore, no force in the first point made for the defendants. Then it was argued that the case was one for arbitration, and the forty days had not elapsed. There again the affidavit is silent, and no information is given as to the time when the claim was first made. But, further, even if it had been alleged that the forty days had elapsed, I still say that would have been a question for the consideration of the County Court and not ground for a prohibition.

Willes, J. : I am of the same opinion. I do not see why the society should not have several usual places of business.

In the case of the Mayor of London *v.* Cox, L. Rep. 2, Eng. & Ir. Appeals 239 (Sept., 1867), it was certainly held that where the foundation for the jurisdiction of an inferior court is itself defective a prohibition may be applied for, but that decision by the House of Lords does not displace the judgment of the Ex. Ch. 2, H. & N. 407, in the same case in which Crompton, J., said : "The courts may very properly in the exercise of their legal discretion refuse a prohibition where the question being one of fact seems proper for the decision of the inferior court, and where there is no reason to suppose that they will come to a wrong decision and exceed their jurisdiction." Looking at the smallness of the amount in the present case, I think at present this is an unnecessary application.

Byles, J. : I concur in all that has been said both by my lord and my brother Willes.

Keating, J. also concurred.

Rule refused.

CASE 65.

COURT OF APPEAL. 1886. *May* 15. *Before* LINDLEY, FRY AND LOPES, L.J.J.

JONES *v.* SLEE.

APPEAL FROM THE CHANCERY DIVISION.

Friendly Society—Proposed Amalgamation—Claimants dissatisfied with arrangement—Application to County Court—Prohibition—Friendly Societies Act, 1875 (38 & 39 *Vic. cap.* 60), *secs.* 22, 24, 25 *and* 30.

By section 24 of the Friendly Societies Act, 1875, "With respect to the resolutions by registered societies and to the proceedings which may be taken by virtue thereof, the following provisions shall have effect . . . . :—Any society may, by special resolution, transfer its engagements to any other registered society which may undertake to fulfil the engagements of such society. By sub-section 6 no special resolution is to take effect until a copy thereof has been registered. By section 25, "with respect to the dissolution of registered societies, the following provisions shall have effect:—If any member of a dissolved society or person claiming any relief, annuity, or other benefit from the funds thereof, be dissatisfied with the provisions made for satisfying his claim, such member or other person may apply to the County Court of the district . . . . and such court shall have the same powers in the matter as in regard to the settlement of disputes under this Act. By section 30, sub-section 10, in all disputes between a society and any member or person insured, etc., such person or member may, notwithstanding any provisions of the rules of such society to the contrary, apply to the County Court . . . . and such court may settle such dispute in manner herein provided."

A friendly society entered into an agreement with another friendly society for the transfer of its business. Before the special resolution was confirmed, certain members of the transferring society obtained, *ex parte*, from the County Court a receiver of its assets, and also commenced proceedings against the secretary asking for relief against the proposed transfer on the ground that the plaintiffs were dissatisfied with the provisions made for satisfying their claims.

Held, affirming the decision of Bacon, V.C., that the plaintiff's proceedings were premature, the existence of a special resolution being a condition precedent to commencing proceedings, and that a prohibition against the County Court proceedings must be granted.

The Swansea Royal and South Wales Union Friendly Society, which was registered under the Friendly Societies Act, 1875, on the 9th March, 1886, entered into a provisional agreement with the London, Edinburgh and Glasgow Assurance Company, Limited, for the transfer of its

business to the company as a going concern, and issued advertisements giving notice of a general meeting of the society to be held on the 26th March, 1886, for the purpose of passing a special resolution in favour of the transfer.

On the 24th March, the plaintiffs, who were members of the society, filed a plaint in the Swansea County Court, stating that they were dissatisfied with the provisions made for satisfying their claims. On the 25th March, an application was made *ex parte*, on behalf of the plaintiffs, to the County Court Judge, on which an order was made appointing a receiver to collect, receive, and get in the moneys and personal estate of the society until the hearing of the action or further order, and restraining the secretary and trustee of the society from making any payments out of the funds of the society until such hearing or further order.

On the 29th March, an application was made to the County Court Judge, on behalf of the society, to rescind the order, but he refused to do so.

On the 9th April, an application by a motion was made before Bacon, V.C., on behalf of the secretary of the society, for a prohibition against the proceedings in the County Court. This special was not confirmed until the 12th April, after Bacon, V.C., had given judgment.

Mr. Martin, Q.C., and Mr. Ashton Cross in support of the motion.—There is no jurisdiction in the County Court to deal with the matter until the transfer is completed, and it is not yet completed. No special resolution has yet been passed as required by section 24 of the Friendly Societies Act, 1875, and until such resolution has been actually passed the County Court has no jurisdiction to interfere. They referred to the Friendly Societies Act, 1875, 38 & 39 Vic., c. 60, s. 24, sub-s. 1, 3, 4, 5, 6, 7, 8 ; s. 25, sub-s. 7 ; s. 30, sub-s. 10 ; s. 22.

Mr. Seward Bryce for the plaintiffs: There is jurisdiction in the County Court under section 22 of the Act. That refers to the rules, and the rules expressly give the County Court jurisdiction in case of dispute. There is clearly a dispute and the plaintiffs are right in applying for relief before the transfer becomes binding on them, on the ground that proper provision will not be made for satisfying their claims.

Bacon, V.C. . I have heard this case argued very carefully, and with a great deal of earnestness and ingenuity. The learned counsel for the plaintiffs has tried to withdraw my attention from the only matter which is at issue upon this motion, and he has told a story, which, if it were true, might possibly be a ground for giving somebody relief in some other case. I should be wrong in my decision if I listened to any of Mr. Bryce's arguments, except only one, and that is his argument upon the 22nd section of the Act. Now, this unfortunate subject of friendly societies has been the subject of legislation for many years, and in the year 1875, an Act of Parliament was passed, after great deliberation, with very great care and consideration, in the first place, for the rights of all subscribers, and also for the interests of the public. A code is there laid down which provides, among other things, that the society may discontinue its operations and transfer them to some other society. It cannot do that without the consent of the prescribed number of subscribers. It is with them that the dispute, if there is any, exists, and not with the

society. All that the society has done has been to hold a meeting convened for the purpose, and to submit this question to the consideration of the shareholders; and they have voted for the amalgamation. If that takes place it will be done according to law. The tribunal to which an appeal may be made is not the County Court. The County Court has no more to do with that than it has with a case of horse stealing for example. The plaint says that: "The plaintiffs are members of or persons having claims against the funds of the Swansea Royal and South Wales Friendly Society, the Committee whereof are taking steps to amalgamate the same with the London, Edinburgh and Glasgow Assurance Society. The plaintiffs are dissatisfied with the provision to be made for satisfying their claims." What jurisdiction, by any construction of the word "dispute," can it be contended that that section gives to the County Court? The jurisdiction is elsewhere. The section gives the County Court no power to entertain such a claim as this. Whether the plaintiffs are dissatisfied or not, if they are outvoted, the votes of the requisite majority must prevail, and the amalgation must, I suppose, take place. While that is pending, in the period between the passing of the resolution and the day upon which the resolution is to be affirmed, some ingenious people think they can plunge this society into litigation in the County Court first, and perhaps this court afterwards, and some other court for a third time. So far as I am concerned I shall take care that the subscribers shall suffer no loss by any costs which are incurred. For the present I do, without hesitation, grant a prohibition against the County Court meddling with this matter, which is not within its jurisdiction or province, but I need not say I do that with all the respect to the learned judge of the County Court. As the matter stands, upon the plain construction of the Act of Parliament, without going more particularly into the evidence which has been mentioned, and which will have to be considered some other day when the question of costs has to be determined, I think Mr. Marten's clients are entitled to the order which they ask for, and the plaintiff must pay the costs of the application.

From this decision the plaintiffs appealed.

Mr. Cookson, Q.C., and Mr. Seward Bryce for the appellants:—The ground for the prohibition was, that the County Court had no jurisdiction, but whether the receiver was properly appointed is a matter for appeal and not for prohibition. By section 24 sub-section 8 of the Friendly Societies Act, 1875, if a society be registered as, or amalgamated with, or transfers all its engagements to a company, the registry of the society, under the Act, thereupon becomes void and shall be cancelled. A resolution has been passed for a transfer of the society's engagements. [Fry, L. J.: Is not the whole of section 24 dependent upon the preliminary words "with respect to special resolutions by registered societies, and to the proceedings which may be taken by virtue thereof"?] The evidence discloses a case of dispute giving the County Court jurisdiction, and the plaint shows that the plaintiffs are dissatisfied with the provisions made for satisfying their claims. They are justified in applying for relief before the registration of the society is cancelled. By the proviso (clause *a*) to section 24, no special resolution for amalgamation or transfer of engagements is valid unless five-sixths in value of the members assent thereto, either at the meetings at which such resolution is passed and

confirmed, or one of them, or in writing, if such members were not present thereat, nor without the written consent of every person for the time being receiving or entitled to any relief, annuity, or other benefit from the funds of the society, unless the claim of such person is first duly satisfied, or adequate provision is made for satisfying such claim. Clause (b) of the proviso enacts that "the provisions hereinafter contained in case of dissolution as to the punishment of officers and the remedy of persons dissatisfied with the provision made for satisfying their claims, shall apply to the case of amalgamation and transfer of engagements. [Fry, L. J. : Do not these provisions apply only where the special resolution has been actually passed? Lindley, L. J. : Sub-section 6 of section 24 provides that the special resolution shall not take effect until the special resolution has been registered at the Central Office.] The section shows what the remedy is if the intended resolution does not properly provide for all claims. The actual existence of a special resolution is not a condition precedent to an application for relief. It is true that when the plaint was filed the amalgamation had not reached the stage of special resolution but only that of agreement; but there is ample jurisdiction in the County Court. The proviso to section 24 incorporates by reference section 25, sub-section 7 (d), which provides that, "if any member of a dissolved society, or person claiming any relief, annuity, or other benefit from the funds thereof, be dissatisfied with the provision made for satisfying his claim, such member or other person may apply," to the County Court, "for relief or other order, and such court shall have the same powers in the matter as in regard to the settlement of disputes under this Act." To ascertain how disputes may be settled, it is necessary to refer to section 22, by which disputes between a member, or person claiming through a member or under the rules of a registered society, and the society, or an officer thereof, shall be decided in manner directed by the rules of the society. The rules of this society provide for disputes being referred to the County Court. The only other clause which seems applicable is section 30, sub-section 10, which provides that in all disputes between a society and any person or member insured, or any person claiming through him, or under the rules, such member or person may, notwithstanding rules to the contrary, apply to the County Court, which may settle such disputes in manner provided. Bacon, V.C., has held that there is no dispute with the society, but it is submitted that his decision is not correct, that there is such a dispute, and that the County Court has jurisdiction.

Mr. Rigby, Q.C., Mr. Marten, Q.C., and Mr. Ashton Cross, for the defendants, were not called upon.

Lindley, L.J. : I am of opinion that in this case the plaintiffs have entirely misconceived their position. This friendly society was established in 1869, and on the 9th March, 1886, it was proposed, and in substance agreed, to amalgamate it with the London, Edinburgh and Glasgow Assurance Society, but that amalgamation was to be carried out in accordance with the provisions of the Friendly Societies Act, 1875; that is to say, a special resolution was to be properly passed. It was no part of the scheme to do this contrary to the Act of Parliament in any way; quite the reverse. The object of the scheme was to follow the provisions of the Act of Parliament. Now the method of effecting an amalgamation is pointed out by the Act of 1875, and the first thing to be done is to pass a special resolution which has to be confirmed.

Then the Act in substance provides what is to be done, if, after the passing of a proper special resolution, some of the members are dissatisfied. In that case they may apply for relief to the County Court under section 25, sub-section 7 (d). But, as I understand the Act, there is no jurisdiction whatever in the County Court to interfere in these matters at all except under that section, and one of the conditions precedent to the exercise of the jurisdiction is the passing of a special resolution and the existence of dissatisfaction with that resolution. Now, if that is the true construction of the Act, I cannot see that there is any real difficulty in the question before us. What the plaintiffs have done is this: Before any special resolution has been passed, and at a time when the terms of it cannot be known, at a time when it is uncertain whether it will ever be passed or not, and at a time when it is uncertain whether it will be properly confirmed or not, they have taken the alarm. On the 24th March they filed a plaint in the County Court, in which they said they were members of, or persons having claims against the funds of, the society, the committee whereof were taking steps to amalgamate the same with the London, Edinburgh and Glasgow Assurance Society; that they were dissatisfied with the provisions to be made for satisfying their claims, and thereby applied to the court for relief or other order. Now that plaint is evidently founded on the section to which I have been alluding, and in point of language the expression *prima facie* seems right, for the plaintiffs are dissatisfied with the provisions to be made. But when we look at the Act of Parliament we find that it only gives a right to complain of a provision made by special resolution, not a provision proposed to be made by some preliminary agreement. In other words, it appears to me that the plaintiffs in this case have proceeded in the County Court too soon, and that they have invoked a jurisdiction on the part of the court which only exists after the passing of a special resolution, and not before, and after the members are dissatisfied with the terms or the provisions of that special resolution. It appears to me, therefore, that this litigation is altogether premature; that the County Court had no jurisdiction whatever to entertain this plaint, and that the appeal must be dismissed.

Fry, L.J.: I am entirely of the same opinion. Mr. Cookson has put his case, as I have no doubt he was bound to do, entirely upon the 24th section of the Friendly Societies Act, 1875, and the sections which are referred to in that section. Now, that section commences with these words, "with respect to special resolutions by registered societies, and to the proceedings which may be taken by virtue thereof," that means, of course, by virtue of the special resolutions, "the following provisions shall have effect." It is obvious, therefore, that all the provisions assume the existence of special resolutions," and that any proceeding which is taken must be a proceeding consequent upon such resolutions. Then, when one looks at the proviso to the 8th sub-section of section 24, one finds that, "no special resolution by any society for any amalgamation or transfer of engagements under this section is valid unless five-sixths in value (to be calculated as for dissolution) of the members assent thereto either at the meetings at which such resolution is passed and confirmed, or one of them, or in writing if such members were not present thereat, nor without the written consent of every person for the time being receiving or entitled to any relief, annuity, or other benefit from the funds of the society, unless the claim of such person be first duly satisfied, or adequate provision be made for satisfying such claim." Then that is followed by a clause that

certain other provisions of the Act, which apply to the case of dissolution of societies, shall apply to the case of amalgamation and transfer of engagements. Amongst the persons who are at liberty to apply in that event is any person "dissatisfied with the provision made for satisfying his claims." Now, what is the meaning of the words "provision made for satisfying his claims?" It is obvious that that refers to the provision made by special resolution and nothing else. The whole of section 24, therefore, taken together, is a section applying where special resolutions have passed, and it is a section which, by reference to the 30th and 22nd sections, gives a power to the County Court to deal with persons who are dissatisfied with the provision made for satisfying their claims by the special resolutions. It appears to me, therefore, that the present plaintiffs in the County Court were entirely premature in their application; they came before there was any jurisdiction. Now, the difference between the jurisdiction contended for by the appellants and the jurisdiction which, in my opinion, existed in the County Court, is a very material one. The one jurisdiction would enable a person who expected that a special resolution might be passed to come to the County Court and to allege dissatisfaction, not with the provision made by a special resolution, but with the provision expected to be made by a special resolution. I can hardly conceive a more idle inquiry than an inquiry as to the reasonableness of the dissatisfaction with a provision which might never take effect. The jurisdiction which the section, according to my view, gives to the County Court is this—to determine whether the provision made by a special resolution, that is to say one which will be carried into effect unless some ground be shown to the contrary, is or is not a reasonable satisfaction of the claims. That is a very intelligible and reasonable subject for discussion; whereas the other is hypothetical, speculative, and theoretical, and, it seems to me, a very idle subject to occupy the attention of the courts. For these reasons I am of opinion that the appeal fails.

Lopes, L. J.: I am clearly of opinion that there was no jurisdiction in the County Court. The time that we must look at is the time when the plaint was filed—that was on the 24th March. At that time it is perfectly clear that no such special resolution as is provided for by section 24 of the Friendly Societies Act, 1875, had been passed, and it appears to me that it cannot be said that anybody is dissatisfied with any provision made for his claim until the resolution is passed which is to provide for that claim. It might be that the resolution would never be passed at all, or that, if passed, there would be no ground for dissatisfaction. It seems to me, therefore, that the Vice-Chancellor was perfectly right in the conclusion at which he arrived, and that this appeal ought to be dismissed.

Appeal dismissed with costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *secs.* 68, 69, 70, 71, 72, 73, 74, 75, & 90.

CASE 66.

COURT OF EXCHEQUER.
POLLOCK, C. B.
ALDERSON, B.
PLATT, B.
MARTIN, B.
1852.
May 22.

GRINHAM AND OTHERS *v.* CARD AND OTHERS.

Distribution of Fund in hands of Trustees—Dispute—County Court—Prohibition.

By the 22nd section of the Friendly Societies Act, 13 & 14 Vic., c. 115, any dispute arising between the members of any friendly society and the trustees, treasurer, or other officer, or committee thereof, shall be settled in such manner as the rules of such society shall direct, and the decision so made shall be binding and conclusive; but if such dispute shall be of such a kind that, for the settlement of it, according to the laws in force, recourse must be had to a court of equity, it may be referred, at the option of either party, to the judge of the County Court.

Where by the rules of a friendly society disputes between members and the trustees may be referred to the arbitration of a certain number of the committee, a dispute which affects the interests of all the individual members of the society, arising between some of its members who are also members of the committee, and the trustees, where the question is not one which necessarily requires that recourse should be had to a court of equity, such dispute cannot be referred to the judge of the County Court, but must be referred to other members of the committee.

Where a dispute arose between two of the members of the committee of a friendly society and the trustees, touching the distribution of a fund in the hands of the latter, and, by one of the rules of the society, it was ordered that disputes were to be referred to such members of the committee as should not be personally interested in the matter.

Held that the judge of the County Court had no jurisdiction in such case, and the court granted a prohibition against further proceedings in a plaint issued out of the court over which he presided.

CASE 67.

HIGH COURT OF JUSTICE, QUEEN'S BENCH DIVISION.
FIELD, J.

STANIFORTH *v.* BOWLEY.

Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap.* 60), *sec.* 22—*Dispute—Rules—Arbitration—County Court—Jurisdiction—Writ of prohibition granted.*

The case of Job Staniforth *v.* Thomas Bowley, secretary of Charnwood Lodge Friendly Society, No. 45 of the Nottingham Imperial Order of Oddfellows, was heard in Chambers before Mr. Justice Field. The case came before the Loughborough County Court Judge on the 21st of December last. The plaintiff, who had been a member of the friendly society for some years, had been expelled on the ground that he had done work whilst in receipt of sick pay, but he alleged that before he was at work, and on the same day, he had obtained the surgeon's certificate that he could resume work in accordance with the rules, and

that the work he did was simply to get potatoes on his own ground for himself. The rules of the society provide for the settlement of disputes, and it was alleged that the plaintiff had been properly expelled, but that he denied. On the hearing of the plaint it was contended that the County Court had power, under section 30 of the Friendly Societies Act, 1875, to order the reinstatement of the plaintiff in the society. For the defendant society it was contended that the Friendly Societies Act of 1875 repealed all previous provisions regulating such societies, and that under the present statute the County Court had no jurisdiction to entertain the matter, and that the plaintiff was bound by the rules. The County Court Judge, however, held that he had jurisdiction, and ordered the plaintiff's reinstatement in the society with costs. The society thereupon applied to the Superior Court for a writ of prohibition, and the matter came before Mr. Justice Field on Friday. Mr. Lane, instructed by Mr. Henry Deane (solicitor of Loughborough), appeared for the plaintiff, and Mr. Graham, instructed by Mr. D. Wittingham (solicitor, Nottingham), appeared for the society. The matter was fully argued by counsel, and the judge decided that the County Court had no jurisdiction whatever to hear the plaint, and ordered a prohibition to issue restraining all further proceedings in the case. From this decision it follows that the rules of the society as to a dispute of the above description are binding, and that the Friendly Societies Act, 1875, gives no jurisdiction to the County Court in such cases.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

MADELEY (SALOP) COUNTY COURT.
1886.
Aug. 17.
Before
A. ROGERS, ESQ.,

CASE 68.

ROOUM *v.* GOOD SAMARITAN LODGE.

1886, *Sep.* 9.
HIGH COURT OF JUSTICE, CHANCERY DIVISION.
STIRLING, J.

Friendly Society—Claim for Sick Pay—Rules—Summoned Meeting—Failure to apply for Arbitration—County Court Judge gave judgment for Plaintiff and over-ruled plea of non-jurisdiction—Writ of prohibition granted by High Court.

At the Madeley (Salop) County Court, on the 17th August, 1886, George Rooum sued the trustees of the Good Samaritan Lodge, Newport (Salop) District, Manchester Unity of Oddfellows, for £8 17s., balance claimed to be due to him for sick pay. The claim was made in the previous February, and was submitted to a summoned meeting of the lodge in March, and the claim was rejected as being contrary to the revised scale of sick pay, which had been reduced pursuant to the District Rules. Rooum did not appeal against the resolution of his lodge to the arbitration of the district, as he should have done, pursuant to the rules of the Order, but instead of doing so entered an action in the County Court for the amount. Mr. Morris, of Shrewsbury, appeared for the trustees in the County Court, and objected that the County Court had no jurisdiction to try the case, the plaintiff being bound by the rules to have the dispute settled by arbitration. Judge Arundel Rogers, however, over-ruled the objection,

and gave judgment for Rooum with costs. The matter was referred to the Unity, and placed in the hands of Messrs. Hand, Blackiston, Everett, and Hand, solicitors, Stafford, who at once filed affidavits of the facts, and obtained a summons from the High Court of Justice for Rooum and the County Court Judge to show cause why a writ of prohibition should not be issued against any further proceedings in the County Court. After service of the summons Rooum (through his solicitor) gave notice that he should not contest the application nor attempt to enforce the judgment he had obtained in the County Court. Messrs. Hand and Co. informed the County Court Judge of this through his solicitor, and asked that he should submit to an order being made, but received no reply. Accordingly on Thursday, 9th September, 1886, the summons was heard in Chambers, in London, before Mr. Justice Stirling, and an order for the issue of a writ of prohibition was made by his lordship. A writ was afterwards issued from the High Court of Justice, in which it is stated "that the judge of the said court had no jurisdiction to hear and determine the said plaint, by reason that the rules of the said Good Samaritan Lodge, as an auxiliary branch of the said Order, provided that disputes between members claiming under the rules and the trustees and officers of the said society, such as the subject matter of the said plaint, are to be settled by arbitration," and thereby his Honour Judge Arundel Rogers and George Rooum are prohibited from further proceedings in the said plaint in the County Court. As Rooum had, after service of the summons, offered submission, Mr. Justice Stirling would not order him to pay the costs of the proceedings, and although the County Court Judge had not submitted, and had therefore rendered necessary the continuance of the proceedings in order to establish the important principle contended for by the Unity, it had not been the practice to grant costs against County Court Judges, and so none were ordered to be paid.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 68.

BELPER COUNTY COURT.
1889.
July 13.
Before
JUDGE WOODFORDE.

CASE 69.

STRAW *v.* DISNEY.

HIGH COURT OF JUSTICE.
QUEEN'S BENCH DIVISION.
1889.
Sept. 5.
Before
POLLOCK, BARON.
Oct. 26.
Before
GRANTHAM, J.

Friendly Societies Act, 1875 (38 & 39 *Vic., cap.* 60), *sec.* 22—*Dispute—Claim for Sick Pay—Higher rate than rules allowed—Plea of non-jurisdiction put in, but judgment given for Plaintiff for full amount claimed.*

Held, on appeal, that the County Court had no jurisdiction, and a writ of prohibition was directed to issue.

This was an action in which William Webster Straw, a member of

the Loyal Colville Lodge, Belper District of the Independent Order of Oddfellows, Manchester Unity Friendly Society, sued Alfred Disney, as trustee and secretary of the lodge, for £3 15s., claimed to be due to him for sick pay. The claim had been referred to a summoned meeting of the lodge on the 1st day of June, 1889, and rejected upon the ground that the plaintiff had not complied with the rules of the society, and was claiming to be paid at a higher rate than the rules allowed. The plaintiff did not avail himself of the right to appeal against the decision of the lodge as provided by the rules of the society, but brought an action in the County Court to recover the amount of his claim. Upon the trial, on the 13th of July, 1889, Mr. Walker, solicitor, Belper, appeared for the defendant, and objected that the County Court had no jurisdiction to try the case, upon the ground that the rules provided for the settlement of disputes by arbitration, and that the claim had been dealt with by arbitration, and the plaintiff had not appealed as provided by the rules by which the plaintiff was bound. His Honour (Judge Woodforde), however, heard the evidence for the plaintiff, and then adjourned the case to the 20th of August, 1889; and on the latter date he gave judgment for the plaintiff against the defendant for the amount claimed, with costs.

By the instructions of the society, Messrs. Cobbett, Wheeler, and Cobbett, solicitors, Manchester, at once filed an affidavit setting out the facts, and obtained a summons from the High Court of Justice for the plaintiff to show cause why a writ of prohibition should not be issued against him, prohibiting him from proceeeding further with his action in the County Court. The summons was heard before Mr. Baron Pollock, on the 5th of September, 1889. The plaintiff was represented by Messrs. Petch and Co., solicitors, who stated that they were also instructed by the County Court Judge; and the defendants were represented by counsel. Several objections were made by the plaintiff's solicitors, but they were over-ruled by the judge. The plaintiff's solicitors then stated that the County Court Judge, and also the plaintiff, wished to file affidavits in answer to the affidavit filed on behalf of the defendants, and the matter was therefore adjourned. The plaintiff's solicitors subsequently gave notice that it was not intended to contest the matter further, or to attempt to enforce the judgment which the plaintiff had obtained in the County Court. On the 26th October, 1889, the matter came before Mr. Justice Grantham, and after hearing counsel for the defendants and the solicitors for the plaintiff, he ordered that the defendants should be at liberty to issue a writ of prohibition directed to the plaintiff, prohibiting him from further proceeding in the action entered by him in the County Court, and also ordering the plaintiff to pay the defendants' costs up to the 5th of September, 1889. A writ was afterwards issued out of the High Court of Justice, which sets forth that the said court (*i.e.* the County Court) had no jurisdiction in the said case, and therefore the plaintiff was prohibited from further proceedings therein. The costs ordered to be paid by the plaintiff were subsequently taxed, and allowed at the sum of £17 11s. 6d.

CASE 70.

COURT OF EXCHEQUER.
POLLOCK, C. B.
MARTIN, B.
CHANNELL, B.
WILDE, B.
1863.
Jan. 14.

IN THE MATTER OF A PLAINT OF DENTON *v.* MARSHALL AND OTHERS.

Prohibition—When application for, too late—Restitution—Writ of—County Court—Jurisdiction of—Friendly Society—18 & 19 *Vic., cap.* 63, *sec.* 40.

A plaint having been brought in a County Court, at the hearing, on the 11th of September, 1862, the defendants excepted to the jurisdiction on the ground that the matter was a dispute between members of a friendly society, which, by the rules of the society, was to be settled by a committee of the society, and that the County Court had therefore no jurisdiction by reason of the 18 & 19 Vic., c. 63, s. 40. The judge over-ruled the objection, and gave a verdict for the plaintiff. Between the 20th and 24th of September notices were served on the plaintiff and his attorney, and on the judge and registrar of the court of the defendants' intention to apply for a prohibition; on the 8th of October the defendants were served with an order from the court to pay the amount of debt and costs, and on the 10th of October one of them paid the amount to the registrar to avoid an execution; on the same day a summons was taken out on behalf of the defendants, calling on the plaintiff and the judge of the County Court to show cause why a prohibition should not issue. This summons was served on the 13th of October, being returnable on the 14th, when it was adjourned to the 24th; on the 16th of October the money was paid out of court by the registrar to the plaintiff's attorney. The matter having been referred to the court on the 24th of October. *Held* that the application had been delayed too long, and that on that ground, under the circumstances, a writ of prohibition ought not to issue.

Quære—whether prohibition will issue after judgment, and execution had, or the judgment satisfied without execution, where the want of jurisdiction does not appear on the face of the proceedings. If it will, *quære*, whether a writ of restitution or a rule of court ordering restitution can be granted.

Quære—whether the 40th section of the 18 & 19 Vic., c. 63, absolutely ousts the jurisdiction of the County Courts in friendly society cases, where the rules of the society provide a specific tribunal for the settlement of the matter in dispute.

This was an application for a writ of prohibition to the County Court of Yorkshire, holden at Kingston-upon-Hull.

The defendants were members and trustees of a friendly society called the Hull District of the Independent Order of Oddfellows, Manchester Unity Friendly Society, and the plaintiff was a member of the Loyal Victory Lodge, being an auxiliary branch of the Hull District. The rules of the parent society, of the Hull District, and of the auxiliary branch, had all been duly certified by the Registrar of Friendly Societies. By the 32nd rule of the auxiliary branch, "If any dispute arise between a member or any person claiming under or on account of

a member, if the amount in dispute exceed the sum of 21s., such dispute shall be heard by a committee chosen under the 191st general law of the Order, and the decision made by such committee shall be binding and conclusive, unless appealed against by a committee of the district within six months of the decision. The decision of the district committee may within six months of its being passed be appealed against to the directors of the said Order by either of the disputing parties, and the decision of the directors shall be final and conclusive.

The plaintiff claimed £10 from the lodge, under the 33rd district law, on the death of his wife, his right to which was disputed by the lodge under the 35th district law, on the ground that his subscription had been in arrear within fourteen weeks of the death. Upon this the plaintiff, on the 29th of August, 1862, took out a plaint in the County Court against the three defendants, as trustees of the Hull District, to recover the said £10.

The plaint came on for hearing on the 11th of September, when the plaintiff appeared by attorney and the defendants in person, and they took objection that the court had no jurisdiction by reason of the rules of the society and of the 40th section of the Friendly Societies Act, 1855, 18 & 19 Vic., c. 63, which enacts "that every dispute between any member or members of any society established under this Act or any of the Acts hereby repealed, or any person claiming through or under a member, or under the rules of such society, and the trustee, treasurer, or other officer, or the committee thereof, shall be decided in manner directed by the rules of such society, and the decision so made shall be binding and conclusive on all parties without appeal."

The judge over-ruled the objection, and gave judgment for the plaintiff for £10 and costs.

On the 20th of September the defendants served written notices on the plaintiff and the registrar of the court of their intention to apply for a prohibition, and on the 23rd and 24th of September similar notices were served on the judge of the court and the plaintiff's attorney respectively. On the 8th of October the defendants were served with an order from the County Court for the payment of £10 debt and £2 10s. costs, and on the 10th of October the defendant Marshall paid the amount to the registrar in order to avoid an execution. On the same day (the 10th of October) a summons was taken out on behalf of the defendants, at Judge's Chambers, calling on the plaintiff and the judge of the County Court to show cause why a writ of prohibition should not issue; this summons was served on the 13th, being returnable on the 14th of October, and was then adjourned till the 24th. In the meantime, on the 16th of October, the £12 10s. was handed over by the registrar to the attorney of the plaintiff at the latter's request.

On the 24th of October the parties agreed to refer the matter to the court, and in Michaelmas Term it was again adjourned by consent to this term.

Mr. Davison now moved accordingly for a rule to show cause why a prohibition should not issue. The County Court had clearly no jurisdiction. The 32nd rule of the lodge directs in what manner a dispute above 21s. shall be decided, viz., by a committee under the 191st general law, and the County Court had therefore no jurisdiction, as the 40th

section of the 18 & 19 Vic., c. 63, expressly enacts that the dispute "shall be decided in the manner directed by the rules," and that "the decision shall be binding and conclusive on all parties without appeal."

[Martin, B. : If a tribunal be appointed by the rules, that tribunal has exclusive jurisdiction by the Act of Parliament, and the jurisdiction of the County Court or justices is ousted; that is the opinion of my brother Bramwell as well as myself.]

That is made still clearer by the 41st section, which defines in what cases the County Court *shall* have jurisdiction, *inter alia*, "for the settlement of disputes that may arise in any society the rules of which do *not* prescribe any other mode of settling such disputes." In Sinden *v.* Bankes it was decided that the case was not, under the circumstances, within the 40th section, but Crompton, J., observes, "It must be taken to be established by the cases which have been decided upon the subject, that if disputes between the societies and their members are ordered by the rules to be referred, and if the statute provides that they shall so order, then that any dispute must be referred, and that the remedy by action is taken away"; and Hill, J., "The desire of the legislature was to protect the property of these societies by preventing the expenditure of their funds in useless and expensive litigation, and to provide a cheap and speedy remedy," &c. There was a case of Turner *v.* Scott before Coleridge, J., at Chambers, in which he was clearly of opinion that the 40th section, in cases to which it was applicable, ousted the jurisdiction of the County Courts. Secondly, it will be contended by the other side that the application for a prohibition was too late. It is said that the court will not interfere after judgment and execution where the want of jurisdiction does not appear on the face of the proceedings, which it of course must be conceded does not appear in the present case, but distinct notice of the want of jurisdiction was brought before the judge, and that ought to be equivalent to its appearing on the record, more particularly when this want could not appear in the County Court proceedings.

[Martin, B. : After execution, what is there to prohibit?]

In Jones *v.* Owen, Patterson, J., granted a prohibition after a writ of possession had been executed, and a clause commanding restitution was inserted in the rule by the express direction of that learned judge.

[Channell, B. : The rule is generally understood to be, that where the want of jurisdiction does not appear on the face of the proceedings, a writ of prohibition will not be granted after judgment.]

That rule must now be taken to be modified. In Marsden *v.* Wardle prohibition was granted to a County Court after judgment, for want of jurisdiction, which did not appear on the face of the proceedings.

[Channell, B. : Is there not some later case to the contrary? Martin, B. : In *Com. Dig.*, "Prohibition" (D.), the 2 *Inst.* 602 is referred to, in which it is clearly laid down that prohibition may go even after execution. And Alderson, B., in Roberts *v.* Humby says: "It is quite clear, upon the face of the proceedings, that there was a want of jurisdiction. If it had not, I own I should have thought, under the circumstances of this case, that this Court would have a right to interfere. I think a writ of prohibition may be granted even after

execution. All the cases where it has been held otherwise will be found to have turned on the acquiescence of the party;" and he then cites the passage at length from 2 *Inst.* 602.]

There was no acquiescence here.

[Martin, B. : But there was great delay.]

The summons was obtained before execution, that is, before the money was paid; and Jones *v.* Owen is distinctly in point.

[Martin, B. : Except that in that case it was a rule that was obtained before execution; this was only a summons, and that has no effect until it is returnable. Wilde, B. : A summons is no stay of proceedings.]

Rule *nisi*.

Mr. Raymond showed cause in the first instance. The County Court had jurisdiction, unless it is taken away by the 40th section of the 18 & 19 Vic., c. 63. That section has only affirmative words; the County Court is a better and as inexpensive a tribunal as that provided by the rules of the different societies; and this jurisdiction ought to have been expressly abrogated, if such had been the intention of the legislature.

[Martin, B. : It seems to me that the statute not only had that intention, but expresses it.]

Secondly, the defendants are too late. The want of jurisdiction does not appear on the face of the proceedings.

[Pollock, C. B. : The defendants did all they could by bringing the point before the judge. Wilde, B. : A defendant is entitled, as a general rule, to a prohibition, unless he acquiesces in the jurisdiction of the tribunal.]

In *Ex parte* Cowan, Abbott, C.J., delivering the considered judgment of the court, says, "It is a settled rule that you cannot apply for a prohibition after a judgment, unless there be an original want of jurisdiction apparent on the face of the proceedings." In the present case, as Martin, B. has observed, there is nothing to prohibit.

[Martin, B. : What do you say to Jones *v.* Owen?]

There the rule was obtained before the warrant of possession had been executed; and, moreover, the land remained, which could be restored to the defendant. Here the money had been paid over.

[Martin, B. : The money was paid over after the summons was returnable.]

It does not appear that there was any notice to the registrar of the summons. Roberts *v.* Humby is not against the plaintiff, as it comes within the general rule, the want of jurisdiction appearing on the proceedings.

[Pollock, C.B. : In my opinion the notice to the judge was quite equivalent to the want of jurisdiction appearing on the face of the proceedings, and therefore, although after judgment, there seems to be no answer but the delay.]

The judgment or verdict was given on the 11th of September; the notice was of no avail unless acted upon by obtaining a summons, and there was, therefore, no reason why the execution of the court should be delayed. The defendants might have obtained a prohibition immediately.

Mr. Davison (in support of the rule): The County Court officials had notice of the defendants' intention to apply for a prohibition; and, moreover, the summons was served on the 13th of October before the money was paid out of court. The delay from the 11th of September to the 10th of October was not unreasonable, considering the time of year.

[Pollock, C.B.: The time of year can make no difference; the courts are, in effect, sitting during the whole of the long vacation for all matters that can be done at Chambers.]

As to the difficulty of getting restoration of the money: how could the land have been restored in Jones *v.* Owen if the plaintiff refused to give it up? Some way of enforcing the rule of the court would be found.

Pollock, C.B.: We are all of opinion that this application is too late, and my judgment proceeds upon that ground. Although, undoubtedly, the parties gave notice to the County Court Judge, which, I think, puts the matter quite upon the same footing as if the objection had appeared upon the face of the proceedings, yet there must be a limit to the delay which parties will be allowed to take in getting that redress which the courts give them. On the present occasion it seems to me that the delay was such as to disentitle the defendants now to make an application to the court for a prohibition. It is too late; there is nothing, as my brother Martin says, to prohibit. There has been judgment and execution; the money has been paid, and is no longer within the control of any court or anybody connected with the suit; the possession of the attorney is, in fact, the possession of the plaintiff himself; the registrar has paid it over, and there is an end of it; and to all purposes the suit is at end and over. If a man wishes to have the benefit of the law he must promptly apply, especially in a case like this. I think the rule, which has, technically speaking, been granted, should be discharged.

Martin, B.: I think also that this application is too late; and the matter that weighs with me simply is, that if there has been any compulsory levy of this money the party may still have a remedy by an action of trespass. If there is no jurisdiction in the County Court, the act of compelling to pay the money would be a trespass, and an action would be maintainable against the persons who did it. A remedy would still remain to the person compelled to pay money in, that manner by the order of a court which had no jurisdiction so to order. But it certainly does seem difficult to understand how a prohibition can possibly go when there is nothing to prohibit, and everything has been done which can be done. There has been a trial, judgment, and execution—the money paid and handed over—and what is the object to be gained by issuing a prohibition it is difficult to see. The officer of the court has been good enough to hand up to me the forms of prohibition; and, before judgment, the prohibition to the inferior court is to hold the plea; and that from the court to the party is to prohibit the following of the plea after judgment it is to prohibit proceeding on the

judgment. Now, if the latter form was used, it would be pretty near like ordering no proceeding to be taken on the judgment when all the proceedings have been taken. The plaintiff has the money in his own hands, and if it were necessary to decide this question (and, if necessary, it would be perfectly right to do so,), I should certainly like to see some other authority than a judgment like this (in Jones *v.* Owen), that on a prohibition there could be any proceeding against the party to enforce repayment of the money, or that there could be a writ of restitution issued by the court. It seems to me it is difficult to understand how that could be done, except in the cases given in some of the old entries. A writ of restitution on the reversal of a judgment in a court of error is a very plain and intelligible thing. But, except there be some strong authority, it is difficult to see how this could be done, or how a writ of restitution can be issued here. I apprehend it could only be done by that mode: the mere order of the court, or a rule of court, could not do it. However, I certainly think, that though after judgment, but before any step has been taken, the application would not be too late, yet a day after is too late; and except we could clearly see at all events that there was something originally wrong, there is nothing to prohibit.

Channell, B.: I am also of opinion that this rule should be discharged. I come to that opinion entirely upon the ground that the application is too late. It appears to me the question that arises is this (and this is the only question upon which I desire to give an opinion): What, in reference to this application, is the *locus standi* of Mr. Davison's client which he has obtained by applying for a summons at Chambers? I consider the application ought to stand upon this footing: that the party is to be placed in the same situation as if the court had been sitting at the time when the summons was taken out and the application had been then made to the full court. Taking this view of it, I should think the time at which the application was made is too late.

Wilde, B.. I am of the same opinion.

Rule discharged, without costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 71.

EX PARTE THE UNITED PATRIOTS' NATIONAL BENEFIT SOCIETY.

HIGH COURT OF JUSTICE. QUEEN'S BENCH DIVISION. *Before* MELLOR, J. AND MANISTY, J. 1878. *Dec.* 9.

Friendly Society—Claim for Funeral Money—Summary jurisdiction—Disputes to be settled by arbitration—38 & 39 *Vic.*, *cap.* 60, *secs.* 22, 30.

A friendly society which did not receive contributions by means of collectors at a greater distance than ten miles from its registered office, had provided by its rules for the settlement of disputes by arbitration.

Held, that notwithstanding section 22 of the Friendly Societies Act, 1875, the summary jurisdiction created by section 30, sub-section 10, applied to a disputed claim by the personal representatives of a deceased member.

This was a motion by way of appeal against a refusal of Field, J., to grant a prohibition to restrain further proceedings upon an order made by a stipendiary magistrate of Birmingham.

Alfred Holt, the applicant to the magistrate, was the personal representative of Thomas Holt, a deceased member of a friendly society, called the United Patriots' National Benefit Society. The application was for an order of payment upon the society for £14, the funeral allowance due upon Thomas Holt's death, according to his contributions, and the society's tables, but the claim for which was resisted by the society.

The 34th of the society's rules provided that all disputes arising between the society and the members or persons claiming through members, should be determined by arbitration in the manner therein described. The society did not receive contributions by means of collectors at a greater distance than ten miles from the registered office of the society.

By section 4 of the Friendly Societies Act, 1875 (38 & 39 Vic., c. 60) :—

"Industrial assurance company" means any company as defined by the Life Assurance Companies Act, 1870, which grants assurances on any one life for a less sum than £20, and which receives premiums or contributions in Great Britain or Ireland by means of collectors at less periodical intervals than two months.

By section 22 :—

Every dispute between a member or person claiming through a member, or under the rules of a registered society, and the society or an officer thereof, shall be decided in manner directed by the rules of the society, and the decision so made shall be binding and conclusive on all parties without appeal, and shall not be removable into any court of law or restrainable by injunction; and application for the enforcement thereof may be made to the County Court.

By section 30 :—

The provisions of the present section apply only to friendly societies, and except as after-mentioned industrial assurance companies receiving contributions by means of collectors at a greater distance than ten miles from the registered office of the society.

Sub-section (1) requires a society to deliver copies of rules and policies to members.

Sub-section (8) requires a society to keep open for inspection its balance-sheet.

Sub-section (9) requires a society to have its annual returns certified by an accountant.

In all disputes between a society and any member or person insured, or any person claiming through a member or person insured, or under the rules, such member or person may, notwithstanding any provisions of the rules of such society to the contrary, apply to the County Court, or to the court of summary jurisdiction for the place where such member or other person resides, and such court may settle such dispute in manner herein provided.

By sub-section 13 :—

All the provisions of the present section apply to societies existing at the commencement of this Act, and shall be contained in the rules of all future societies to which this section applies; and any act or omission which, by virtue of this and any other section of this Act would be an offence on the part of the registered society shall be an offence on the part of any other society to which this Act applies, and of any officer of such society bound to fulfil the duty (if any) whereof such offence is a breach. The word "society" in the present section shall, except in provisions one, eight, and nine, include all industrial assurance companies, but nothing in the present section contained shall apply to any assurance with any such company, the premiums in respect of which are receivable at greater periodical intervals than two months.

The order applied for having been made, the society took out a summons before Field, J., to prohibit the magistrate, on the ground that he had no jurisdiction. The society now appealed against the dismissal of this summons.

Mr. Charles, Q.C., and Mr. Austin argued for the society :—This is admittedly a friendly, and not an industrial society; but the application of section 30 is limited only to societies of either kind which receive contributions by means of collectors at a greater distance than ten miles from the registered office of the society. The words of limitation cannot relate only to industrial assurance companies, for such a construction would deprive all friendly societies of the power of enforcing their rules concerning the settlement of disputes. Section 22 applies to this claim, and the magistrate has no power to interfere.

Mr. Wood Hill for the claimant: If the 13th sub-section be read with the introductory words of this section 30, it will be seen that the limitation of application relates only to industrial and not to friendly societies. Sub-section 10 is expressly rendered applicable to industrial assurance companies, wherever they receive contributions; it never could have been intended to deprive members of friendly societies of the same remedies in disputes as are given to other similar societies. This, too, is the natural interpretation of the words at the beginning of the section.

Mr. Charles, Q.C., in reply.

Mellor, J. : I have been very much perplexed by the various provisions of this Act, which are apparently inconsistent with one another; but, on the whole, I have come to the conclusion that the construction contended for by the person claiming this money is right. I cannot help thinking that section 30 intends that all friendly societies should be within sub-section 10, and that certain industrial societies, but not all, should also be within it. That being so, the intention was that persons having questions with such societies should have recourse to the summary jurisdiction provided in sub-section 10 for their settlement. This seems to have been the view of my brother Field at Chambers, and I think this application, to reverse his order, must be dismissed.

Manisty, J. : I am of the same opinion. I think that the decision of my brother Field should be affirmed. Looking at the interpretation clause in section 4, I think it appears that the legislature had in mind two sets of societies, and it will be observed that part of the definition

of an industrial assurance company is that it is one that receives premiums or contributions by means of collectors, while a friendly society is spoken of in other parts as supported by voluntary subscriptions. Now, the word "subscription" is not found in section 30. Then the general provisions which occur throughout the Act must be read subject to any limiting enactments having reference to the particular class of society. The general rule in section 22 is thus, as I think, qualified by the words in section 30. That section 30 was intended to qualify something must be conceded, and the only question really is to what extent it qualifies section 22. If it be read in the ordinary grammatical sense of the word, friendly societies generally seem to be within the section; had the intention been to convey a different meaning, the draughtsman would, I think, probably have worded it thus: "The provisions of this present section apply only to friendly societies receiving contributions by means of collectors at a greater distance than ten miles from the registered office of the society, and, except as after-mentioned, to industrial assurance companies receiving contributions in like manner." Tried, therefore, by this test, the words of the section as it stands are inapt for the construction sought to be placed upon them by the appellants, and I think that the other construction, which accords with the form of the language, is not redeemable, and expresses the intention in limitation of the general rule to confer on friendly societies and their members the option of resorting to a court of summary jurisdiction for the settlement of disputes. The clause "except as after-mentioned," may, I think, be satisfied by the words at the end of sub-section 13, but it is not necessary in the present case to decide that point; for I agree in thinking that there was no ground for prohibiting the magistrate here, as having acted without jurisdiction over this friendly society.

Appeal dismissed.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 68.

CASE 72.

QUEEN'S BENCH DIVISION. 1894. *June* 4. CAVE, J., AND COLLINS, J.

REGINA *v.* BENNETT AND WARD.

Friendly Society—Property withheld, or misapplied—Criminal proceedings—Friendly Societies Act 1875 (38 & 39 *Vic., cap.* 60), *sec.* 16, *sub-sec.* 9.

Where an officer of a friendly society is entrusted with property, for the value of which he has to account, and a deficiency exists which cannot fairly be attributed to depreciation and waste, this constitutes a *prima facie* case for the granting of a summons under section 16, sub-section 9, of the Friendly Societies Act, 1875.

Rule *nisi* for a mandamus to a metropolitan police magistrate granted on the application of the secretary of the Fulham Liberal Club, a society registered under the Friendly Societies Act, 1875, calling upon the magistrate and Ward (the late steward of the club) to show cause why a summons should not be issued against Ward under section 16, sub-section 9, of that Act.

For the quarter ending September, 1893, Ward had been entrusted with the club's stock of wines and beer to the value of £353 17s. After making certain admitted allowances for depreciation and waste amounting to £46 13s., he would have to account to the club for the sum of £307 4s. In his weekly accounts rendered to the secretary during the quarter, he was credited with £168, while the value of the stock at the end of the quarter was only £71 19s. and there was therefore a deficiency of £67 5s.

Upon an application for a summons against Ward, under section 16, sub-section 9, of the Friendly Societies Act, 1875, the magistrate refused to issue a summons on the ground that the section did not apply to a case like the present, and the questions between the club and Ward were matters of account properly triable in a County Court.

Cave, J. : In order that section 16, sub-section 9, of the Friendly Societies Act, 1875, should apply there must be some *prima facie* evidence that the person to be charged is withholding or misapplying property of the society. If there is nothing more than an ordinary debt, the County Courts exist for the purpose of deciding such cases, and there is no need for coming to this section in order to punish a man for doing that which is really not punishable as a criminal offence.

In order to bring a case within this sub-section it is necessary to show that the defendant has either misapplied the property of the society, or, having it in his possession, withholds it. That is to say, he must have had either money or goods of the society in his possession and refused to account for them ; or, having sold the goods, he must have misapplied the money. Something of a criminal nature must be shown to have existed.

In the present case the defendant has received in the course of a quarter goods to the amount of £353, and after making a sufficient allowance for waste and so on, he is unable to account to the extent of £67 for the value of the goods he has received. The complainant cannot show what the defendant has done with those goods. All that he can show is that the defendant has had a certain amount of goods, and has not accounted for £67 worth of them.

It appears to me that this is a *prima facie* case calling upon the defendant for an answer. Unless in some manner he has misapplied the goods or the money, or has withheld goods or money he has received for the goods, this £67 cannot well be accounted for ; and, consequently, it is right to call upon him for an answer. I do not mean to suggest that the defendant Ward may not have an answer ; but, if he has no answer—if he cannot show what has become of this £67 worth of goods—I do not think anyone would be going beyond the line of justice if he came to the conclusion that the defendant had misappropriated it ; and if so, he would be liable to the punishment provided by this section. The defendant may have a perfectly sufficient and satisfactory answer ; but, as long as things stand as they do, a *prima facie* case is made out, and I think the magistrate should have allowed the summons to issue.

Collins, J. : I am of the same opinion and on the same grounds.

Rule absolute.

N.B.—See Friendly Societies Act, 59 & 60 *Vic., cap.* 25, *sec.* 87, *sub-sec.* 3.

CASE 73.

V.C. KINDERSLEY. 1863. *Friday, Jan.* 23.

RE THE ALFRETON DISTRICT FRIENDLY AND PROVIDENT SOCIETY.

Winding-up Act of 1862—*Provident Society.*

A petition was presented to have a friendly and provident society, which had done no business since 1844, wound up under the Companies Act of 1862.

Held that the society came within the terms of that Act.

This was an unopposed petition for the winding up of the above society under the Companies Act of 1862. It appears that in 1844 dissensions arose amongst the members of the society, and that no business had since been done. There were about a hundred members, nearly all of them in a humble condition of life. All the trustees with the exception of one were dead, the only surviving official being a Mr. Mather, who had opposed several attempts which had been made to adjust the affairs of the society on the ground that the magistrates applied to were nominal members.

Mr. Simmonds appeared for the petitioners, and submitted that the case came within the provisions of the Winding-up Act of 1862, 25 & 26 Vic., c. 89.

The Vice-Chancellor, after some discussion, made the order.

CASE 74.

QUEEN'S BENCH DIVISION. 1888. *April* 16.

MANCHESTER LAW CLERKS' SOCIETY *v.* WILSON.

Friendly Society—Permanent Allowance—Customary Employment.

The rules of the Manchester Society provided that when a free member, from advanced age, defective sight, blindness, or other infirmity, shall be permanently prevented from following his customary employment he shall be entitled to a permanent allowance.

W. was a law clerk on becoming a member in 1875. In 1882 he fell into ill-health, and became a collector to a brewery, and was off and on a collector or merchant's clerk, and from ill-health, finally, he was incapacitated.

Held that his customary employment being that of law clerk he became entitled to the permanent allowance.

CASE 75.

WIGAN COUNTY POLICE COURT. 1881.

LUDLOW *v.* RYLANCE AND OTHERS.

Aug. 12. *Friendly Societies Act*, 1875 (38 & 39 *Vic.*, *cap.* 60), *sec.* 16—*Illegal Investment—Loan on personal security—Conviction.*

On the 12th August, 1881, at the Wigan County Police Court, before Messrs. J. Gerrard and J. Prescott, Thomas Rylance, James Ashcroft, and William Adamson, Trustees of the "Ever Firm" Lodge No. 1, Miners' Sick and Accident Society, Goose Green, Pemberton, were summoned by Mr. J. M. Ludlow, Chief Registrar of Friendly Societies, for having on the 28th April last, unlawfully committed an act forbidden by the 38 & 39 Vic., c. 60, by having invested the funds of the said society contrary to the provisions of the 16th section of the Act. Mr. Ellis appeared on behalf of the Registrar of Friendly Societies, and Mr. Lees represented the defendants.

Mr. Ellis, in opening the case, said the defendants were charged with unlawfully doing an act forbidden by the 38 & 39 Vic., c. 60, by having invested the funds of the society contrary to the 16th section of the Act. It was a proceeding instituted against the defendants for investing the funds of a friendly society, known as the "Ever Firm" Lodge, in a manner in which they were not authorised. The defendants were the trustees of the society, and the proceedings were taken against them in their official position. That was a case of some importance, because he need not remind their worships that it was important above everything if a friendly society should do the work which it was intended it should do, proper care must be taken of the funds of the society in order that the members might get benefit from them when required and when they became entitled to it. He would draw their attention to the Act of Parliament relating to the investment of trust funds, and then he would point out to the bench the offence which they charged against the defendants and for which they were brought there that day. The government of a friendly society was regulated by the rules of the society, and by an Act of Parliament which was passed in the 38 & 39 Vic., c. 60, and of course the rules of the society could only be of any validity so far as they were authorised or permitted by the provisions of that Act. With reference to the funds of the society, section 16 provided for the manner in which the funds of the society might be invested. It set forth that the trustees with the consent of the committee of management or the majority of the members present at any general meeting, might from time to time invest the funds or any part thereof in one of the following ways, viz.: in the Post-office Savings Bank, or any bank coming under the Act of 1863, with the Commissioners for the Reduction of the National Debt, or in the purchase of land, the erection or alteration of property, and upon any other security expressly permitted by the rules of the society, not being personal security, except as hereinafter authorised with respect to loans. The last provision was the one to which he wished particularly to refer, although the bench would find that no question would arise upon it.

Mr. Lees said that was the point upon which a question did arise.

Mr. Ellis said if it did arise Mr. Lees would be heard later on. It was provided, with respect to trustees, that the trustees of a friendly society should not be entitled under any circumstances to invest upon personal security, and even if the rules permitted it they could not invest in that manner. But the rules of the society to which the defendants belonged did not permit anything at all of the sort. It was provided by rule 19 that the funds of the society should be invested in the Savings Bank or in the public funds, and therefore the rules themselves set forth that money should not be invested on personal security, but even if they had done so, the section of the Act of Parliament would not have allowed it, because it said they might invest upon any other security, not being personal security. Part 3 of the 14th section of the Act specified what were the offences. It was an offence if any registered society failed to give notice and send in returns, or wilfully neglected or refused to do any act or to furnish any information required for the purposes of the Act to the Chief Registrar or other person authorised in his behalf. Sub-section 41, section 14, said that every offence by a society under that Act should be deemed to have been committed by every officer of the same, bound by the rules thereof to fulfil any duty whereof such offence was a breach. or if there were any such offence, every officer of the committee of management, unless such member was proved to have been ignorant or attempted to prevent the commission of such offence, was guilty, and every default under the Act constituted a new offence during which the same continued. There were two classes of persons referred to as officers of the society; the officers of the society and members of the committee of management, and it was important to notice the distinction between the two. Supposing there had been no officers of the society, and proceedings had been taken against a member of the committee of management, if he had come to the court and pleaded that he was ignorant of the charge, or that he had done his best to prevent the offence and failed, then the prosecution could not have asked that any penalty should be pressed upon him. But that did not extend to an officer of the society. Section 32, sub-section 2, provided that for every society officer, or member of a society, or other person guilty of any offence under the Act for which no penalty was expressly provided, was liable to a penalty of not less than £1 and not more than £5, recoverable on the suit of the Registrar, or Assistant Registrar. The bench would therefore see that there was no specific penalty named for that offence, and the person entitled to recover it was the Chief Registrar or the assistant chief, and such was recoverable in a court of summary jurisdiction. The facts of the present case were these. The "Ever Firm" Lodge, No. 1, Miner's Sick and Accident Society, under the provisions of the Act of Parliament, had to return periodically to the Chief Registrar an account of its assets, and its position, and the return for the year ending December 31st, 1880, which appeared to have been sent on the 20th April, 1881, showed in their investments that £80 was lent to a distressed member on promissory note. He need not tell the bench that that was purely personal security, and that it was not a security which the trustees of the society ought for a moment to sanction in the interests of the members of the society, and that it was not a security which they were entitled by law to sanction, being of a purely personal character. It seemed that the total assets were £128 4s. 6d., which included there was the loan. The very term "distressed member" would lead the authorities to suppose that it was security not only personal, but very indifferent personal security, and an application was

made to the society for some explanation about that. The only explanation which was sent was this : " The above loan was granted by the majority of the members at a general meeting called for the purpose, and a minute was taken to that effect, regardless of rule."

Mr. Lees said he did not know how Mr. Ellis could make that evidence against the defendants, who were trustees. Unless the defendants authorised the secretary to make that statement it did not bind them. The secretary was responsible for the return, and yet he was not summoned. He objected to it as being no evidence against his clients.

Mr. Ellis said the proceedings were not taken from any vindictive motive, but by an officer who was discharging his public duties. The Registrar found a state of things which was illegal.

Mr. Lees said he objected not to the Registrar, but to the course Mr. Ellis was taking.

Mr. Ellis, continuing, said that for the members to go and break the rules and apply them in a particular way was no excuse for the trustees upholding the law. The return was sent, or purported to have been sent, signed by the treasurer and one of the trustees (James Ashcroft), and that was an acknowledgment that he had invested the money on personal security. These were the facts of the case, and he would now call evidence.

Mr. Lees said he would raise the question whether the bench had jurisdiction to decide upon the matter. The Act of Parliament expressly gave authority to the Chief Registrar, the Assistant Registrar, or any party aggrieved to sue. No person could come forward unless he was a person aggrieved, and the Act enabled a specific person to sue, and he only could sue ; therefore it was impossible for him to delegate his authority to any person unless he was aggrieved. The information purported to have been laid by Mr. T. R. Ellis, and no authority that the Chief Registrar could give to Mr. Ellis could bestow upon him those functions which were specially delegated to him or the party named under the Act for the purpose of taking proceedings.

Mr. Ellis said that offences and penalties under that Act might be prosecuted and recovered by the Summary Jurisdiction Act as against a society or its officers. The Summary Jurisdiction Act incorporated Jarvis's Act, under which the proceedings were taken, and by section 10 of that Act it was enacted that every such complaint upon which the justices of the peace were authorised to deal, every such complaint or information might be made or laid by the complainant, informant, counsel, attorney, or any person authorised in that behalf

Mr. Lees said that his objection was as to the person to recover the penalty. According to the 23rd section, every society officer, or a member of a society, or other person guilty of an offence under the Act for which no penalty was expressly provided, was liable to a penalty not less than £1 and not more than £5, recoverable on the suit of the Chief or Assistant Registrar, or any person aggrieved. Mr. Ellis was not the Chief nor the Assistant Registrar, nor yet the person aggrieved.

Mr. Woodcock (magistrates' clerk) : But he is the attorney.

John Hibbert, secretary of the lodge, was then called, and produced the return sent in to the Chief Registrar, containing the facts as to the loan, and signed by himself and James Ashcroft, one of the defendants. On the 7th May they received a letter from the Chief Registrar complaining of the state of the funds, and no reply was sent to it. After that the lodge tried to get the lent money back from the distressed member, Thomas Heaton, but they failed to do so. Cross-examined by Mr. Lees: At the meeting when the money was lent, there was a ballot taken, and some of the trustees voted against the loan being made. The defendants were really not to blame for the loan; it was the society. Rule 9 of the society said that no new rule could be made unless with the consent of the majority of the members present at a general meeting of the society. Before the money was lent, witness called a meeting of the members. That was on the 9th of June, and the voting was—for the loan 26, against 6. Witness had not been summoned, although he was as guilty and as innocent as the others. (Laughter.) The money was lent for two years, at 7½ per cent., payable in advance. They tried to get it back subsequently, but Heaton said he could not pay them, but that it would be forthcoming at the end of the term. Heaton kept horses and was a carrier. He was also a member of the society.

Mr. Lees submitted that it was simply an enlargement of the objects of rules 9 and 19. It had already been sanctioned that the money should be invested in the names of the trustees, and that the trustees might by rule or order alter the mode of that investment, and so much of the funds of the society as might not be wanted should be invested by the consent of the trustees in various ways. But what was the resolution? The money lent was wanted for immediate use; it was lent by the resolution and order of the society for two years at 7½ per cent., and he submitted the society was doing a good thing in that, whatever might be the legal effect of what they did. They were perfectly sure, they felt that the money was perfectly safe, and they were satisfied with the security. Did the bench think the society acted wilfully or unlawfully in the matter, because unless they did there was no offence.

Mr. Ellis said they did not proceed against the defendants for wilfully committing it.

Mr. Lees said the members believed that they had the power to make that rule in the way they had done and voted for it, and how could they say that they did it with a guilty knowledge, which was necessary to commit an offence. Rylance told them that it was against the law to grant the loan, but they were fully in the belief that they had the power to grant it. It was the society, then, that passed the resolution and not the defendants, and the latter, though they told the members that what they were doing was illegal, had to pay for the wrong they did not do. They told the secretary it was against the rules, and it appeared that if anybody was to blame it was the secretary. If the bench decided against him on the points he had raised, then he asked them, seeing that the defendants were answering for the mistakes of others, to inflict the lowest penalty they possibly could under the Act.

Mr. Tomkins, chief clerk in the office of the Chief Registrar of Friendly Societies, deposed that rule 19 of the society stipulated that the funds were to be invested in the Savings Bank or in the public

funds by the trustees. The witness also gave evidence as to the appointment of the defendants as trustees of the society.

Mr. Lees said the proceedings were taken under Jarvis's Act, and under that Act that offence ought to be prosecuted within six months of the committal of the offence. The offence was committed in May, 1880, and the information was laid in April last, therefore the proceedings had not been taken within six months.

Mr. Ellis said that under the 13th section of the Act that limit did not apply. It was made a continuous offence.

Mr. Lees contended that the 13th section did not do away with his contention ; it merely made neglect of duty a continuous offence.

The bench over-ruled Mr. Lees' objection, and Mr. Lees, continuing, said that a special meeting of the society was called by the secretary for the purpose of considering the necessity of advancing the money, £80, to the member. The society met and discussed the question, and a vote was taken, and out of the 32 members present 26 voted for the grant. The society therefore considered that the resolution revoked the 19th rule of the society and became itself the rule of the society, showing how the money might be invested.

Mr. Ellis said that according to the Act no amendment of the rules was valid until the same had been registered under the Act.

After a short consultation by the bench, it was intimated that they had decided upon a conviction, and Mr. Ellis said he desired to add something which he had kept back until he knew the decision of the magistrates. This offence was not the innocent mistake which his friend asked them to believe it was, because the attention of the society had been called to the matter previous to that year. In a return sent for the year ending 31st December, 1879, the investment was put as being in Parr's Bank, but that arrangements were being made for its transference to the Post-office Savings Bank. The Registrar sent back a copy of rule 19, pointing out to them that Parr's Bank was not such an investment as the rule authorised. They, however, carried out their original intentions, and he (Mr. Ellis) was instructed to press the case, so that it would be a caution to other people not to do the same in the future.

Mr. Lees remarked that the society invested the money in Parr's Bank, and a better bank there could not be in England ; but when the trustees were informed that it was not an authorised investment, they withdrew the money and put it in the Post-office Savings Bank.

The bench said they considered the case proved, and inflicted a penalty of 40s. upon each of the defendants.

Mr. Lees pointed out that it was a joint offence, and there could only be one penalty.

The defendants were then fined £5, and on the application of Mr. Ellis, costs were allowed.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 44.

CASE 76.

COURT OF QUEEN'S BENCH.
COCKBURN, C. J., CROMPTON, J., BLACKBURN, J., AND SHEE, J.
1865.
Monday, June 5.

THE QUEEN AGAINST JOHN TIDD PRATT, ESQ.

Friendly Society—Place of Meeting—Power of changing it—Registrar—Mandamus—18 & 19 *Vic., cap.* 63, *secs.* 25, 27, 28.

A friendly society was established in 1832 under the Acts then in force relating to friendly societies. In 1858 its rules were amended, and were certified by the Registrar, under Statute 18 & 19 Vic,, c. 63. Rule 1 mentioned its name and place of business at No. 106, Duke Street, Liverpool. By rule 92, no new rule shall be made nor any of the rules "amended, altered, or rescinded, unless with the consent of a majority of the members present at a general meeting of the society specially called for that purpose." (Sections 25 & 27). By rule 93, in case of any alteration in the place of meeting, written notice shall be sent to the Registrar of Friendly Societies, &c. (Section 28). In 1865, the annual general meeting of the society was held in Manchester, and on the same day, and at the same place, a special general meeting was held for the purpose of rescinding the existing rules and making new ones. These meetings were convened by the president and secretary. Resolutions were passed at the special general meeting rescinding the existing rules and making new rules, by one of which the committee were empowered to change the principal office of the society, either occasionally or permanently, should the interests of the society seem to require it. Upon application for a rule for a mandamus to the Registrar of Friendly Societies to certify the new rules, he stated that he refused, because he was of the opinion that, until the place of meeting of the society was, by a resolution of the society, at a proper meeting called for that purpose, changed from Liverpool, no meeting of the society elsewhere than in Liverpool could, conformably to law, make new or alter the existing rules of the society, and that in the notice convening the meeting, and the rules passed there, divers matters seemed to him in point of law objectionable, and he referred to them.

Held that an alteration in the place of meeting could only be made at a meeting of the society legally convened; and, therefore, the rules made at the meeting summoned by the president and secretary at Manchester were void.

CASE 77.

BRISTOL.
1896.
June 30.
Before THE RECORDER.

REGINA *v.* DUNCAN.

Friendly Society—Licensing Acts—Right of Police to enter Lodge Room—Refusal to admit—Conviction—Appeal against conviction dismissed.

The question of what was denominated "Police Interference" at the Bristol A.M.C. of the Manchester Unity, has had another turn of

publicity by the case we give herewith at length, owing to its importance to Friendly Societies. The case was tried before the Bristol Recorder on June 30th. Mr. Candy, Q.C. (specially retained) and Mr. F. E. Weatherly, instructed by Messrs. Morley and Bailey, of London, solicitors to the Society of Buffaloes, appeared for the appellant; and Mr. B. R. Vachell, instructed by the Town Clerk of Bristol, represented the respondents.

Mr. Vachell informed the Recorder that the appellant, James Duncan, was the licensee of the Brandy Cask, or Victoria, licensed house, in Bond Street, St. James, and the appeal was against a conviction by the magistrates, under section 16 of the Licensing Act of 1874, for refusing to admit P.S. Dowding to the house on April 23rd. The facts were practically admitted.

Mr. Candy: The whole point is whether he had authority to be admitted to a particular room. I accept his statement that he thought there was public music going on within the meaning of the statute.

The Recorder: That would not be the Licensing Act. There will be the point whether he demanded an entrance for the purposes of the Licensing Act.

Mr. Candy: That is a point.

The Recorder: And the other point is whether it is an offence to refuse under those circumstances entrance to part of the premises.

Mr. Vachell said that on April 23rd, P.S. Thomas Dowding and a constable heard singing and music in a front room on the first floor of the Brandy Cask, and they entered the house to see as to the conduct of it, whether there was any offence under the Licensing Act. It was quite possible the police went there to make inquiry as to whether or not there was music and singing.

The Recorder: The double purpose would not matter if there was a purpose under the Licensing Act.

Mr. Vachell said the police entered the house and went up to the first floor to the door of the room where music and singing were going on. The door was fastened on the inside, and on the officers knocking at this a slide in the panel was opened, and a man looking through shook his head, and closed the slide again. Thereupon the sergeant sent downstairs for the landlord, and the landlord came out of the room in question. He had a conversation with Dowding and the other policeman, and the effect of it was a refusal on his part to grant admission to this room, Dowding said to Duncan "I want to visit the room," and the landlord replied "You cannot; it is a secret society of Buffaloes," adding, "I have nothing to do with it." The sergeant contended that the room was part of licensed premises, and, as a matter of fact, it was. Undoubtedly there was a meeting at the time of the Clarence and Colston Lodge of the Royal Antediluvian Order of Buffaloes; but he submitted that there was a breach of section 16 of the Licensing Act of 1874. Unquestionably it was an extremely important section for the police and the public, because it enabled the police to exercise supervision over licensed houses. Clearly, if a policeman entered a licensed house, he was entitled to go into every part, and the refusal to allow him to go to any portion of the licensed premises was an

offence under the Act. Further, the landlord was not entitled to come there and say that in consequence of his sub-letting some portion of the licensed premises there he was entitled to render nugatory the powers of the Act of Parliament giving the police the right to enter these premises.

Arthur J. Esbester, assistant clerk to the magistrates, produced records of the lower court.

P.S. Dowding, 5A, stated in evidence that when he visited the Brandy Cask the landlord said he had no authority to gain admittance for the police to the room in question. The object of going to the house was to see there was nothing wrong going on inside, no one drinking or gambling.

Mr. Candy: You don't suggest you had any reason for supposing anyone was drunk in that room where the music was?

Witness: No, sir.

You said before the magistrates that you were attracted by the music and singing?—Yes, that is the truth.

And you knew Duncan had not a license for music, and, rightly or wrongly, you were under the impression he ought to have one?—He was permitting music and singing without a license.

And you thought the offence committed was permitting music and singing without a license?—Yes.

You did not, at the time you went into the house, think there was anything in the nature of drunkenness or any other offence of that kind?—Yes, I did.

What do you mean?—I never visit a house without having it in my mind.

You said nothing about that to the landlord?—No, I didn't.

P.C. Albert Rendle, 37 A, who was with Sergeant Dowding, was also called.

Mr. Candy, addressing the court on behalf of the appellant, said that the case raised questions of much wider importance than was at first apparent, of great importance to all members of the licensing trade and their guests. The Buffaloes Society were directly concerned in this matter, but the question was whether the sub-letting of a room on licensed premises to a society or an individual put that part of the premises in a different position from other portions in regard to rights, whatever they were, conferred by statute upon constables as to entering. The two statutes of 1872 and 1874 were to be read together as one Act. In 1874 the legislature went back upon what it had done in 1872, and greatly qualified and mitigated the rigour of section 35 in regard to the power of constables. Of course a constable could only have such power of visiting licensed houses as was given him by statute; and section 16 gave the right of entry for the purpose of preventing or detecting the violation of any provision which it was his duty to enforce; if it was not a provision which it was his duty to enforce the section did not apply.

If the summons had been taken out under the repealed section he had referred to and that section had been in force he would have had no answer to the charge, but if his Honour read section 16 in the light of section 35, which it replaced, then he contended that the facts before the court disclosed no offence against the Licensing Acts. He had nothing to do with the wisdom or the unwisdom of the legislature in 1874 undoing what they did in 1872.

The Recorder: According to your argument there may be drinking going on in a private room.

Mr. Candy: A constable has no right except under and by virtue of some statutory provision to go on licensed premises at all. The moment he demands to go it must be in pursuance of a section of one of the Acts. Here he did not demand to enter on the licensed premises at all.

The Recorder: You say once on the premises the Act is satisfied?

Mr. Candy: May I guard myself against too large an admission? I don't dispute it is the practice of constables, if they have reason to suspect an offence against the licensing laws, to be permitted to go to any part of the premises they like, and it is the practice not to obstruct the police; But I say there is no power.

The Recorder: That there is no power to do it when once he has got inside?

Mr. Candy: I do. He added that it raised a question of very wide importance and far-reaching consequences.

The Recorder replied that it was so important that it would mean this—the power given the constable under section 16 was of no avail provided a violation was being carried on inside in any part of a house when once an officer had gained an entrance.

Mr. Candy contended that the Act of 1874 distinctly curtailed the powers given to a constable by the Act of 1872, and this was not a careless, but a studied revision of the law, intended to undo what the Government of the day considered the mischief effected by their political opponents in 1872.

The Recorder said what they intended doing was to sever the rights of constables to enter licensed premises and premises not licensed, making a warrant necessary in the latter case.

Mr. Candy said it had been assumed that a constable had a right to enter any part of licensed premises, and he might be having a quiet afternoon tub in a private room and be disturbed by a constable (laughter).

The Recorder: I think time would be allowed you by the law to put your clothes on (laughter).

Mr. Candy said it did not follow that such a practice as to entry could stand an argumentative address as to the construction of the Act. He had to submit the point that according to the statement of the sergeant who visited the premises, he did not demand admission to this portion of the licensed premises for the purpose of preventing or detecting the violation of any provision of the Acts of 1872 or 1874.

The Recorder: I think I am with you there, subject to what Mr. Vachell says.

Mr. Vachell admitted that the police must enter for the purpose of the Licensing Act, section 16.

Mr. Candy said that the question under consideration was raised with the consent and possibly at the expense to some extent of a secret society; but it was not merely a matter for secret societies, for there could not be greater protection for them than for the private individual. Some people objected to secret societies.

The Recorder: Do you mean to say that if a room in licensed premises is privately taken it ceases to be licensed premises?

Mr. Candy: No, I don't say that; but I say that if I take a suite of rooms at an hotel, and if I have a piano and invite a number of people to come and sing to me to solace me in my solitude —(laughter)—and perhaps a policeman hears the singing, which may not be of the most correct description—(laughter)—I should object to the admission of the police, and if he came I should throw him out of the window if I could. (Laughter.)

The Recorder: Take another point—supposing you were gambling. (Laughter.)

Mr. Candy: As I probably should be. (Laughter.)

The Recorder: Do you mean to say the police have no right to enter and see what is going on? (Laughter.)

Mr. Candy: Yes, I do. I will put it in a slightly different form, and say, "If the police demanded admission to my room where I am taking my ease, it is not a refusal within the meaning of this section for the licensed holder to say——"

The Recorder: Supposing you locked your door so that the landlord could not open it, he does not refuse or admit.

Mr. Candy: That is what happened here.

The Judge: If you threw the constable out of the window probably you would find your way into this court. (Laughter.)

Mr. Candy: I should plead probably extenuating circumstances. (Laughter.) He added that in the present instance the door of the Buffalo Lodge room was locked, and the landlord came out, out of respect to the police, but no one could gain admittance to the room except by giving the password and the counter-sign. The door was locked not by the licensed holder.

The Recorder: With his assent.

Mr. Candy: Not with his assent. The Buffaloes, he added, paid so much a quarter for the room, and claimed the right during the time they held possession to have quiet enjoyment. He was in a position to prove the room was let to private persons.

Mr. Vachell: I admit that.

Mr. Candy said this was a most respectable society, and it might please members to know that it included the Duke of Cambridge, Sir Richard Webster (who was a strict teetotaler), Sir Blundell Maple, the Duke of Rutland, and the Duke of Teck.

The Recorder: You say this to please the Buffaloes, not to affect my judgment. (Laughter.)

Mr. Candy: Just so; just throw it in as a sort of compliment to them. (Laughter.)

James Duncan, the appellant, gave evidence of the letting of the lodge room in his house for Buffalo meetings, and spoke of the room being tiled during sittings.

The Recorder asked if Mr. Candy had any case to cite as to the exemption of premises which were sub-let.

Mr. Candy: No.

Mr. Vachell, replying for the respondents, argued that the construction put on the Act of 1874 by Mr. Candy was unreasonable. The whole object of the Act might be defeated by an offence going on in any portion of the house to which a constable might not be admitted. The reasonable construction of the Act was that if a constable was entitled to go on licensed premises he was entitled to go on any portion of them.

The Recorder, giving his decision, said he would take Mr. Candy's three points in the order in which they had been raised. In the first place, he said section 35 of the Act of 1872 was repealed and section 16 substituted for it, and he suggested that there was an intention of the legislature to alter the law and limit the power of constables, and that if a constable demanded admission on licensed premises and got in without refusal or failure to admit this section was satisfied. For his own part he confessed he was unable to take that view of the law; it seemed to him that if it was the right one section 16 would be absolutely nugatory. Mr. Candy admitted that. His Honour held as a fact that there was a refusal or a failure to admit the constable to the room in question. Bnt, he asked, did that constitute in the words of the Act a refusal or a failure to admit to any licensed premises? Were these rooms licensed? They were. They were part of the licensed premises. They were licensed premises, and therefore there was a failure or refusal to admit the constable to these licensed premises. That was dealing with the first point. The second was that the sergeant did not demand admission for the purpose of preventing or detecting violation of the Licensing Act. He was entirely with Mr. Candy when he suggested that if a constable demanded admission to licensed premises for the purpose of detecting an offence under the Public Health Amendment Act, 1890, the section under notice gave him no power to enter—and his Honour was not aware of any other power. On law, Mr. Candy's argument was right and clear; but, on the evidence, he came to the conclusion that the fact that the predominant motive in the sergeant's mind when he visited Duncan's house was, hearing the music and singing, to see whether there was any drinking or gambling as well. On the whole, he found on that question of fact that the sergeant demanded entrance, and that there was a refusal and failure to comply with that demand, made for the purpose, in the meaning of the Act, of

preventing or detecting violation of any provisions of this Act. Then, thirdly, Mr. Candy raised a point which was novel to him, and he agreed that it was important. But it seemed to him that if he decided in his favour he would be making the law. That was not for him to do. He had to deal with the words of the Act, and he found these were licensed premises. He thought Mr. Candy's argument a good one that when a landlord sub-let part of his licensed premises it was beyond the control of the landlord. But he was not prepared to make law; therefore he held, upon the third point, that there was no right in the landlord, because he let part of his premises to a society or anyone else, to refuse admittance to the police. He disallowed the appeal, with costs.

Mr. Candy asked for a case for the Queen's Bench Division.

The Recorder granted the application.

CASE 78.

COURT OF QUEEN'S BENCH. CAMPBELL, C. J., WIGHTMAN, J., AND ERLE, J. 1852. *April* 20.

WALKER AND OTHERS *v.* THE BRITISH GUARANTEE ASSOCIATION.

*Policy of Guarantee—Action against Sureties—Benefit Building Society—Liability of Treasurer—Bailee—Loss by Robbery—*10 *Geo.* IV., *cap.* 56, *secs.* 20 *and* 22.

The Friendly Societies Act, 10 Geo. IV., c. 56, ss. 20 and 22, has not the effect of increasing the responsibility of a treasurer of such a society beyond that of a bailee in respect of the loss of money immediately after its receipt.

A declaration on a policy of guarantee, whereby the defendants covenanted to indemnify the plaintiffs against any loss that might be occasioned by the acts or default of J. J., in the office of treasurer of a certain benefit building society, alleged that J. J., as such treasurer, received £170, the moneys of the society, and that he had not paid over the same moneys to the bankers of the society to the credit of the plaintiffs within a short time after he received the same, viz., during the next day, or at any other time, as it was his duty to do according to the rules of the society and the directions of the trustees.

Plea, that after J. J. had so received the moneys, and before the time when he ought to or could have paid to the said bankers, he, without any act or default, or any negligence or want of due or proper care on his part, was robbed by violence of the whole of the said moneys, by the same being feloniously and violently stolen and carried away from his person, whereby he was unavoidably, without any act or default of his, prevented from paying the said moneys to the said bankers. Upon this plea a verdict was found for the defendants.

Held, on motion for judgment, *non obstanto veredicto*, that the facts pleaded were a good defence to the action.

Mr. Knowles (with him Mr. Mellish) in support of rule.

The judgment of the court was delivered by

Lord Campbell, C. J.: We are of opinion that in this case there ought not to be a rule for judgment for the plaintiffs *non obstanto veredicto*, as we consider the plea found for the defendants to be clearly a sufficient answer to the action. The condition of the bond is that "James Jones should duly and faithfully discharge the duties of his office of treasurer to the building society, and obey the directions of the trustees, and duly account to the trustees for money, goods and chattels which he might receive on account of the trustees."

The declaration alleges that "J. Jones, as such treasurer, receives £170, the moneys of the society, and that, according to the rules of the society and the direction of the trustees, he ought to have paid over the same moneys to the bankers of the society to the credit of the plaintiffs within a short time after he received the same, viz., during the then next day; yet that he had not done so, nor had he ever paid the same, whereby the said moneys became and were lost to the society." It is here charged that he was a bailee of specific moneys, which identical moneys it was his duty to carry and deliver to the bankers of the society. The plea avers that, "after he had received the moneys, and before the time when he ought to have paid, or could have paid the same to the bankers, he, without any default or negligence, or want of due care on his part, was robbed by violence of the whole of the said moneys by the same being feloniously and violently stolen and carried away from his person, and thereby he was unavoidably, and without any act or default of his, prevented from paying the said moneys to the bankers of the society." This plea (found to be true) alleges a loss of the moneys by irresistible violence; and the general doctrine is not denied, that if the subject matter bailed be lost by *vis major*, which we translate irresistible violence, the bailee is discharged. If J. Jones, the principal, was guilty of no default, the defendants, as his sureties, cannot be liable.

Reliance, however, is placed on the 6 & 7 Wm. IV., c. 32, s. 4, and the 10 Geo. IV., c. 56, s. 20, by which it is said that as soon as the treasurer of such a society receives any money on account of the society, he, *eo instanti*, becomes a debtor to the society, so that payment alone can discharge him from his liability. But we think this must be confined to such moneys received by him as he might use as his own, he being at liberty to pay the debt with other moneys. He cannot, in respect of one receipt by him as treasurer, be considered at the same time as bailee of specific, ear marked moneys, and a debtor to the same amount, with the power of discharging his engagement by payment of an equivalent sum from any source, or in any denomination of coin, or in any paper securities which pass as cash. According to the averment in this declaration, J. Jones was undoubtedly bailee of the £170, and therefore he was not a debtor to that amount.

As bailee, the true relation in which he stood to the society, he was discharged by the robbery. If this were not so, his liability would be greater than that of a common carrier; for he would not even be discharged by the act of God or of the Queen's enemies; and, indeed, Mr. Knowles was driven to contend that if while carrying to the bankers a bag of gold representing the £170, within a few minutes after receiving it

an earthquake had swallowed it up, he still would have been debtor to the society for the amount. But we are of opinion that the statutes relied upon were not intended to cast such an extraordinary liability upon an officer of such a society, or upon his sureties. Entertaining no doubt upon these points, we think that Mr. Knowles should take nothing by his motion.

Rule refused.

CASE 79.

QUEEN'S BENCH DIVISION.
CAVE, J.
WRIGHT, J.
1894.
May 25.

THE QUEEN *v.* RICHARDSON AND OTHERS.

Poor Law—Pauper "entitled" to periodical payments—Application of Guardians for order for payment—Justices—Jurisdiction (Petty Sessions)—Whether Justices have jurisdiction where pauper's right disputed—Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 *Vic.*, *cap.* 61), *sec.* 23.

By section 23 of the Divided Parishes and Poor Law Amendment Act, 1876: "Where any pauper shall be entitled to any annuity or periodical payment, the trustee or other person bound to make payment of the same to the pauper may from time to time pay to the Board of Guardians of any union or parish, out of the instalments which have become due, the cost incurred in the relief of such pauper accrued since the last instalment;" and where such trustee or other person declines to make such payment, the Guardians may apply to the Justices at Petty Sessions, who may, "if satisfied that it is right under all the circumstances to do so," make an order upon him to pay the requisite amounts then due to the Guardians, provided that they or their relieving officer have declared the relief to be given on loan.

On an application by Guardians for an order under the above section, the pauper's right to the periodical payment in question was disputed by the persons alleged to be bound to make it. *Held* that the justices had no power to hear and determine the matter of the application, because section 23 made it a condition precedent to the exercise of their jurisdiction that the right of the pauper to receive the periodical payment should be undisputed.

N.B.—See Poor Law Amendment Act, 1879, 42 *Vic.*, *cap.* 12.

CASE 80.

QUEEN'S BENCH DIVISION.
COCKBURN, C. J.
MELLOR, J.
1878.
May 23.

REGINA *v.* JUSTICES OF SWINDON.

Relief—Friendly Society—Poor Law Amendment Act, 1876—*Insane Pauper Member.*

A member of a friendly society became insane and chargeable to the union, and was sent to the County Lunatic Asylum. The guardians applied to justices under 39 & 40 Vic., c. 61,

s. 23, for an order on the trustees to pay out of the arrears of his annuity the cost of his maintenance in relief of the union. The trustees opposed the order on the ground that the rules forbade them to so apply these funds, and the annuity was needed for the member's family. The justices made the order, but refused to issue a distress warrant.

Held the justices were bound to issue the warrant, for the trustees ought to have appealed or applied to quash the order; and it was now no defence, that the order was invalid or made without jurisdiction.

The case of the Guardians of the Highworth and Swindon Union against Messrs. Lawson and Tarrant, the trustees of the St. Margaret's Lodge of the Independent Order of Oddfellows in that union, came in the form of an application for a *mandamus* to compel the Justices of the Swindon Division to enforce an order made by them upon the aforesaid lodge. It appears a member of the lodge became insane, and was subsequently chargeable to the union, and was maintained out of the rates in the County Lunatic Asylum. The guardians made an order on the lodge to pay over a portion of the sick allowance of the member for his maintenance. This the Oddfellows declined to do, alleging there was no provision in the rules of the society which made them liable; therefore, they declined, urging also that the money was needed for the maintenance of the member's family. The justices held that the guardians had a claim under a clause in the Poor Law Amendment Act, and made an order to pay the sum of money, representing arrears for maintenance and, as a matter of course, established the fact of the liability of the lodge. The Oddfellows declined to obey the order, and when called upon by the union to enforce their order, the justices declined to do so unless compelled.

Mr. Charles, Q.C., appeared for the Guardians, and Mr. Smith for Messrs. Lawson and Tarrant.

Mr. Smith said the St. Margaret's Lodge is a branch of the Swindon District of the Manchester Unity Friendly Society. The Manchester Unity is a very large society, established in Manchester, with districts throughout the country, and the districts themselves have lodges which are branches of the districts. The matter comes before the court under the Poor Law Amendment Act, 1876, 39 & 40 Vic., c. 61, s. 23. That section, in a case where a pauper lunatic is in a pauper lunatic asylum, enables the guardians to apply to justices for an order that any sums to which the pauper would be entitled from his benefit society should be paid to the guardians. First, the section states that "Where any pauper shall be entitled to any annuity or periodical payment, the trustee, or other person, bound to make payment of the same to the pauper, may from time to time pay to the board of guardians of any union or parish, out of the instalments which have become due, the cost incurred in the relief of such pauper accrued since the last instalment." Then comes the material paragraph. "Where the guardians incur any expenses in the relief of a pauper lunatic, being the member of a benefit or friendly society, and, as such, entitled to receive any payment, they may recover from him, as a debt, or from his executors, administrators, or assigns, in case of his death, the sum so expended by them as aforesaid, and the managing body of such society, after notice from the

clerk to the guardians, served previously to the money being paid over, shall be required to pay the same to such guardians, and shall be exonerated on payment thereof from any further liability. Where any trustee, manager, or other person shall decline to make any payment the guardians may apply to the justices in petty sessions assembled, and such justices may, if satisfied that it is right under all the circumstances to do so, make an order upon him to pay the requisite amounts then due to the guardians at once, and to pay from time to time in future, as the liability in respect of the relief arises thereafter. Provided that this clause shall not have effect unless and until the guardians or their relieving officer shall have declared the relief to be given on loan, nor in respect of any relief granted contrary to the rules and orders made under the authority of the statutes in that behalf." That contemplates the case of a pauper being in a pauper lunatic asylum, and being at the same time a member of a friendly society, and, as such, entitled to receive certain benefits from a benefit society. It thus enables the guardians to declare that the relief that they are giving is to be on loan, and having done that they may go before the justices and ask the justices to make an order for payment. That section gives a very wide discretion to the justices, and they are to make an order to pay, if they are satisfied under all the circumstances that it ought to be done. The justices, in this case, heard arguments before they did make an order on Mr. Lawson and Mr. Tarrant to pay certain sums to the guardians. But Mr. Lawson and Mr. Tarrant were not the proper persons to be summoned at all, and they have not made any payment, and no payment has been made. Then the guardians applied to the justices for a distress warrant for the amount.

Mellor, J.: The discretion is to the justices to make the order. There is no discretion about making a warrant. There is nothing as to that in this section, the discretion given by this section to the justices is to make the order or not.

Mr. Smith: They have made the order, and there can be little doubt that, having made the order, they have repented of having made the order, because when applied to for a distress warrant subsequently they refused to give it.

Mellor, J.: It would be a very absurd thing to make the order, and then rest on their oars and say, "Now we have made the order." Surely it must be an effective order. They have exercised the discretion they are entitled to exercise. When they have made the order what further power have they?

Mr. Smith: The order was an irregular one. The decisions go to that, that in applying for a *mandamus* to justices, or calling upon them to show cause, it is open to me to show that the order ought not to have been made originally.

Mellor, J.: It is not a void thing. This rule is made for the protection of justices in case they should otherwise incur some liability in enforcing the order.

Mr. Smith: There will be a contention on the merits, that under the circumstances this lunatic never was entitled to the benefit which was the foundation of the order. In the next place the wrong people are before the magistrates. The trustee and the secretary are persons who

have no power to make payments, no money comes into their hands, and to direct the distress warrant to go against their goods would be, in fact, levying from them money which they were never bound to pay.

Mellor, J. : Would not that be a perfectly good answer to the order? Until you have disposed, in some way or other, of the order, by bringing it up to be quashed, the order remains, and surely it must be in force.

Cockburn, C.J. . On what ground did they argue against it?

Mr. Charles : On the ground that on the true construction of the rules they were not bound to administer sick relief to this pauper lunatic while he was in an asylum. The justices having heard the arguments at length, on one side and on the other, made the order.

Cockburn, C.J. : That order is not appealed against. If the Act applies, these are the right persons.

Mr. Smith : No, they are not, because the rules of the society state that the committee of management shall consist of certain persons, and the lodge is governed by a committee of management.

Cockburn, C.J. : You see we have not before us the materials upon which to review the order of the justices. The matter is within the jurisdiction of the justices. Granted, if the persons against whom the order is asked for do not come within the Act, the magistrates ought not to make the order ; and it may be that, if any such question of law or fact arose, the magistrates would be called upon to state a case which this court would decide, whether rightly or wrongly ; but here is an order not appealed against. Then the order is within their jurisdiction. As part of the exercise of that jurisdiction they must ascertain and decide whether or not the persons against whom the order is asked for are persons amenable to their jurisdiction. If they have decided that, we cannot go back behind the order. You might have restrained them by prohibition, if they were exercising functions which they did not possess, or you might get a case stated. Mr. Charles says you did get one, and did not take it up.

Mr. Smith : The justices were wrong on the merits, because on the rules as they existed at the time this order was made, the lunatic was not entitled to any sick pay.

Cockburn, C.J. : That is a matter for the justices to decide, not for us.

Mr. Smith : The point is this, and it affects all the friendly societies throughout the country, as I am told. This Act of Parliament was passed in 1876, which stated that when any lunatic was entitled to any benefits the guardians should have power to apply to the justices for an order that the society should pay them instead of the lunatic. The friendly societies throughout the country then altered their rules, and made an additional rule that no lunatic who was in a pauper asylum should be entitled to sick pay, and the point that the guardians took is this—that if a man has once become a lunatic there is no power to alter the rules for the purpose of altering any right that he had.

Cockburn, C.J. : That may be a very fit matter to be adjudicated upon by this court, but not in the present stage. You should have raised that before. They offered you a case and you would not take it. We really cannot discuss the merits of a case upon an order which is unappealed.

Mr. Smith : The other point, which is a very important one to the two individuals that are here, is that they are not the committee of management.

Cockburn, C.J. : That was a very good ground on which to resist the order, and it may be a very good ground to prevent the order being made, or at all events, to get it upset on appeal ; and you might have appealed, if you had asked the magistrates for a case, independent of what Mr. Charles says, that they did prepare a case, which you might have had if you had liked. I am quite sure that on a matter of this kind the magistrates would prepare a case ; you did not choose to take it or ask for it.

Mellor, J. : You must show in some way or other that the order which the justices have decided upon was out of their jurisdiction or not within it. That you do not show. Surely, if the order was made, after hearing the parties, it is too late when the application is made to the justices to enforce the order, then to set up what might be, and was in point of fact, urged on the hearing before the magistrates. It would be a very strange course, and I never heard of it, that I know of, except where it was clear that the justices had done something out of their jurisdiction.

Mr. Smith : Of course, if I might take the advantage of the last clause of the 23rd section of this statute, which directs that the clause shall not have any effect among other things in respect of any relief granted according to the rules and orders made under the authority of the statute made in that behalf, I should contend that, under the rules and orders that were made of the friendly society, this lunatic was not entitled to any sick pay.

Cockburn, C.J. : That is a good point against the order.

Mellor, J. : All these were points against the order ; but the only course you would have would be either to appeal against, or have it brought up to have it quashed if it was a case in which you could say they exceeded their jurisdiction, or move for a prohibition against the further proceeding.

Mr. Smith : I cannot find that the practice under Jervis's Act is that because an order has been made the court would grant a rule to pay, as a matter of course. It has always been in cases where the court has been satisfied, as I submit, on hearing the facts, that the order was properly made.

Cockburn, C.J. : I have sat here a long time, but I have never heard of that before. Where an order has been made by a competent authority in a matter within the jurisdiction of that authority, you must give effect to the process of the court. You cannot go back behind the order to see whether, upon the merits, it was properly made. There are other modes of trying that. You cannot pass by the other matter, and then, in the last stage, propose to rip up the whole inquiry and begin *de novo*. It would be most inconvenient.

Mellor, J. : If they were proceeding beyond their jurisdiction there might be some ground for your argument.

Mr. Smith : In addition to that the Friendly Societies Act of Parliament, the 38 & 39 Vic., does provide that all disputes between the society and persons claiming under a member shall be decided in the way appointed by the rules, that is, by arbitration in the ordinary course. I am bound to say that point was not taken before the magistrates.

Cockburn, C.J. : You will take it upon the next occasion.

Mr. Smith : There is this difficulty about it that this is an order which not only applies to the 32 weeks, which would be a sum certain, but orders them to pay for ever in future—that is the difficulty under the order. The Act says the justices may make an order that they shall pay the requisite amount, and pay from time to time in future, as the liability in respect of the relief arises thereafter, so that apparently there is no means of appealing at some future time against the further order.

Cockburn, C.J. : You might have appealed ; it was your own fault ; you did not choose to take up the case ; you choose to fight with the order, and it turns out to be one which you cannot deal with. You might have had a case, but you would not ; if people will be obstinate they must take the consequences. The rule will be made absolute with costs.

Rule absolute.

N.B.—See Poor Law Amendment Act, 1879, 42 *Vic.*, *cap.* 12.

CASE 81.

1884. REGINA *v.* JOYCE AND OTHERS.

HANTS MIDSUMMER SESSIONS. *Indictment of Trustees of Friendly Society for refusing to obey an order made under* 39 & 40 *Vic.*, *cap.* 61, *sec.* 21, *ordering them to contribute towards maintenance of lunatic member.*

Henry James Joyce, Sidney Spicer, Frederick Hall, and Frederick Street surrendered to an indictment for having disobeyed an order of justices ordering them to contribute towards the maintenance of a pauper lunatic.

Mr. Temple-Cook appeared for the prosecution, and Mr. Warry for the defendants, who were not placed in the dock, but simply surrendered in open court.

Mr. Warry, on defendant's behalf, said the circumstances of the case were peculiar. The defendants, as the secretary and trustees of Court Alexandra, No. 4,151, of the Ancient Order of Foresters' Friendly Society, were, at the instance of the Hartley Wintney Union authorities, upon whom a member of the court, named Ellis, had become chargeable as a pauper lunatic, ordered to contribute to his maintenance.

The other members of the society refusing their consent to meeting the guardians' demand, amounting to £50 17s. 6d,, the order was disobeyed, On this, the guardians resorted to the proceeding open to them, indicted the defendants at these sessions, and a bill was consequently found against them at these sessions in April last. This put a new complexion on the case, and the members of the court, rather than allow their officials to be held liable for their omission to pay, had since met and resolved to meet the guardians' demands. The defendants were, therefore, now ready to abide by an order of court to pay £6 17s. 6d., the guardians' demands before the magistrates, and the costs, amounting to something like £30, in addition. Under these circumstances, he hoped the court would say no punishment ought to be awarded these defendants.

Mr. Temple-Cook, on the part of the prosecuting guardians, said he was instructed to support the plea put forward by the defendants. The guardians felt that when they resisted, or at all events refused to obey the order, no alternative was left to them but what he might call these unusual proceedings, unusual because his recollection did not go back to a similar experience. They were the only proceedings open to the guardians for the enforcement of the order, but it having now been complied with by an undertaking on the part of the defendants to pay the money and costs, as far as they were concerned they would consent to the defendants being allowed out on their own recognizances.

The chairman said the defendants in the early stages of the case appeared to have been badly advised, and he regretted to see them in their position, both as regarded themselves and the society they represented. The court was willing to believe that though they had acted unwisely and wrongly, they had no personal feeling in the matter, and disobeyed the order of the magistrates simply through a misapprehension and misdirection. As they had now done their best to atone for their wrong, and the order of the magistrates would be recognised, the court would be content to accept their own recognizances in £1 each, to come up for sentence when called on.

The defendants gave the required undertaking, and were discharged.

N.B.—See Poor Law Amendment Act, 1879, 42 *Vic., cap.* 12.

CASE 82.

CHANCERY DIVISION.
FRY, J.
1879. *Dec.* 1, 2, 3.

TROTTER *v.* MACLEAN.

Mine — Trespass — Unauthorised Working — Bonâ fide Expectation of Title — Account — Allowances — Cost of Severance—Statute of Limitations, 21 *Jac. I., cap.* 16, *sec.* 3—*Trustees—Notice—Evidence—Admissibility—Entry in Diary of Agent—Proof of Posting of Letter—Costs—Offer by Defendant.*

The owner of a mine commenced to work from his own mine into an adjoining mine vested in trustees, in the *boná fide* belief that he was about to obtain from them a contract authorising him so to work, and

gave to one of the trustees notice that he was about to commence working. *Held* that the working, though no contract was afterwards entered into, and the trustees had no power to make one, ought to be treated on the same footing as if it had been commenced inadvertently, and in taking an account of the minerals gotten without authority, the defendant was allowed the cost of severing them, as well as the cost of bringing them to bank. But from the time that notice was given to the defendant that no contract would be made with him authorising him to work, his working was treated as fraudulent, and he was allowed only the cost of bringing the minerals to bank.

So long as a wrongful working is to be treated as inadvertent the Statute of Limitations applies, and the account will only be directed for six years from the issue of the writ. But the onus is on the defendant to show that minerals gotten by him were gotten before the six years.

An entry in a diary kept by an agent is not admissible to prove a fact therein stated, unless it is shown that it was the duty of the agent to make the whole entry. A witness produced a copy of a letter which he said was made by him, and he swore that he should in the ordinary course of business have posted the original.

Held that this was evidence of the posting, and that, the original not being produced, the copy was good secondary evidence.

The solicitors of a defendant wrote to the plaintiff's solicitors that they were prepared to advise the defendant to settle on certain terms.

Held that this was not such an offer as would free the defendant from liability to the subsequent costs of the action, inasmuch as he might have refused to follow the advice of his solicitors.

CASE 83.

IRELAND. *IN RE* HICKEY, A BANKRUPT.

COURT OF APPEAL. 1875. *Nov.* 25, 26. *Dec.* 4. *Policy of Assurance—"Order or disposition" of Bankrupt—"Consent and permission of the true owner"—*20 & 21 *Vic., cap.* 60, *sec.* 313—*Notice of assignment, Post Office—Official and particular Assignees—Priority.*

On the 28th June, 1873, M. H. by deed agreed to assign for value a policy effected with the Reliance Assurance Society on his own life to his father, W. H., who, on the same day, by a separate deed, assigned it to D. by way of equitable mortgage to secure a present loan and future advances. The parties were all resident in Ireland, and a memorandum at foot of the policy (which had been issued from the Dublin branch office) directed that notice of assignment should be given at the head office in London. Immediately upon the execution of the deed of the 28th June, D. prepared a formal notice of the assignment to W. H., in whose name, and at whose request, it was signed by him, and addressed and posted in Dublin to B., the society's secretary at the London office. M. H. was adjudicated a bankrupt in January, 1874, and died in the

following August, when his assignees in bankruptcy gave notice to the London office, and claimed the proceeds of the policy as having been in his "order or disposition" at the time of his adjudication, B. deposing that D.'s notice had never reached the London office.

Held (upon the law and facts together, reversing the decision of Miller, J.), per Ball, C., that the notice having been duly posted, must be presumed to have reached its destination, and, per Christian, L. J., that, irrespective of the question whether the notice was actually received at the office, the mere posting of it was effectual to prevent the policy from being in the "order or disposition" of M. H. at the date of his bankruptcy "by the consent and permission of the true owner," within the meaning of section 313 of the Irish Bankrupt and Insolvent Act, 1857, 20 & 21 Vic., c. 60.

CASE 84.

BRISTOL SUMMER ASSIZES. LORD CHIEF JUSTICE. 1824. *Sept. 6th.*

WALTER *v.* HAYNES.

A letter directed "Mr. Haynes, Bristol," containing notice of the dishonour of a bill, was proved to have been put into the post-office. *Held* that this was not sufficient proof of notice, the direction being too general to raise a presumption that the letter reached the particular individual intended.

This was an action of assumpsit upon a bill of exchange by an indorsee against an indorser.

In order to prove the notice of dishonour, it was shown on the part of the plaintiff that a letter containing such a notice, and addressed to "Mr. Haynes, Bristol," was put into the post-office.

Abbott, Lord C.J. : This is not sufficient proof of notice. Where a letter, fully and particularly directed to a person at his usual place of residence, is proved to have been put into the post-office, this is equivalent to proof of a delivery into the hands of that person ; because it is a safe and reasonable presumption that it reaches its destination ; but where a letter is addressed generally to A.B. at a large town, as in the present case, it is not to be absolutely presumed from the fact of its having been put into the post-office that it was ever received by the party for whom it was intended. The name may be unknown at the post-office, or if the name be known there may be several persons to whom so general an address would apply. It is therefore always necessary, in the latter case, to give some further evidence to show that the letter did in fact come to the hands of the person for whom it was intended.

Other evidence was then given, tending to show that the letter had been received by the person to whom it was addressed, and the plaintiff had a verdict.

Mr. Sergt. Pell and Mr. Manning for the plaintiff ; Mr. Bompas for the defendant.

CASE 85.

CHANCERY DIVISION.
CHITTY, J.
1894.
June 29th.

NATIONAL DWELLINGS SOCIETY *v.* SYKES.

[1894 N. 828.]

Company—General Meeting—Conduct and power of Chairman.

It is the duty of a chairman to preserve order, conduct proceedings regularly, and take care that the sense of the meeting is properly ascertained with regard to any question before it; but he has no power to stop or adjourn a meeting at his own will, and if he purports to do so it is competent for the meeting to resolve to go on with the business for which it has been convened, and to appoint another chairman for that object.

CASE 86.

CHANCERY DIVISION.
CHITTY, J.
1895.
July 10th.

RE ATKINSON, ATKINSON, & ATKINSON.

Insurance, Life—Friendly Society—Policy—Omission of name of person interested—14 *Geo. III., cap.* 48, *sec.* 2; 13 & 14 *Vic., cap.* 115, *sec.* 2.

On the 5th August, 1851, John Atkinson effected a policy on his life in the National Provident Institution for the sum of £100. By this the company agreed to pay according to the rules and regulations thereof within three months after notice of death of John Atkinson, "to the widow of the assurer, and if there shall be no such widow, then to the child or children of the assurer living at his death; if more than one in equal shares, and if there shall be no such child, then to the executors, administrators, or assigns of the assurer." The deceased died on the 24th of November, 1894, having been twice married, first on the 28th December, 1845, to M. A. D., who died in 1866, and secondly to E. M. F. about the year 1871, who survived the deceased. There was surviving issue of the first marriage three children, but there was no issue of the second marriage. The usual evidence of death was lodged at the office for payment of the money, and the same was claimed on behalf of the executors. The office, however, refused to pay it to anyone except the widow. The National Provident Institution was established under the Friendly Societies Act of 1850, 13 & 14 Vic., c. 115, by section 2 of which it was enacted that any number of persons might establish a society, or branch of the same, under the provisions of the Act, for the purpose of raising by voluntary subscriptions of the members thereof, with or without the aid of donations, a fund for any of the following objects, that was to say: for insuring a sum of money to be paid, on the death of a member, to the widower or widow of a member, as the case might be, or to the child, or to the executors, administrators, or assigns of such member, or for defraying the expense of the burial of a member, or of the husband, wife, child, or kindred of a member. This was a summons to determine to whom the policy moneys ought to be paid. It was contended that the policy was

void so far as related to the widow and children of the assured because they were not named by name in the policy, as required by the Life Insurance Act of 1774, 14 Geo. III., c. 48, s. 2.

Chitty, J., said that the Act of 1850 recited that many societies had been established for certain purposes therein mentioned, and for other purposes of a provident and benevolent nature, and the Act must be construed as an enactment, the object of which was to encourage providence and benevolence. It was clearly provident and benevolent for a man to provide for his widow and children. Section 2, sub-section 1 of the Act was said to be a mere statutory provision enabling persons to combine for these purposes in a friendly society, but not to enable the Society to carry out effectually the object of the enactment owing to the operation of section 2 of 14 Geo. III., c. 48. But the enactment of section 2 of 13 & 14 Vic., c. 115 was so precise that it must, in his lordship's opinion, be read and stand independently of the 14 Geo. III., c. 48. It enacted what was lawful. It was an enabling and beneficial Act, and, whatever might be the construction of the 14 Geo. III., c. 48, the Act of 1850 was unaffected by that Act. Section 11 of the Married Women's Property Act, 1882, 45 & 46 Vic., c. 75, to which effect had been given by the courts, was in *pari materiâ*. The result was that this was a good policy for payment of the sum insured, according to the language of the policy, and the widow was accordingly entitled to be paid the sum. That term was not confined to the person who was the wife of the insured at the time the policy was taken out any more than "children" was so limited in meaning.

CASE 87.

1879.
BACON, V.C. *Feb.* 7.

IN RE HORBURY BRIDGE COAL, IRON, AND WAGGON COMPANY.

COURT OF APPEAL. *March* 5.

Company—Voting—Show of Hands—Poll.

The articles of a company provided that at any general meeting, unless a poll was demanded by at least two members, a declaration by the chairman that a resolution was carried, and an entry to that effect in the minute book, should be sufficient evidence of the fact; that if a poll was demanded it should be taken in such manner as the chairman should direct; that at any general meeting the chairman should be entitled to a second or casting vote, and that every member should have one vote for every share. At a meeting at which five members were present an extraordinary resolution to wind up the company was passed. K. was then proposed as liquidator, and an amendment was moved that M. should be appointed. Three of the five persons present voted for M., the other two, holding a greater number of shares than the three, voted for K. A poll was not demanded.

Held by Bacon, V.C., that K. was duly elected.

Held on appeal, that a poll not having been demanded, the voting was to be by show of hands, without counting shares, and that M. therefore, was duly elected.

CASE 88.

SUPREME COURT, PORT AUGUSTA, SOUTH AUSTRALIA. 1887, *March* 16. *Before* JUDGE BOUCUNT AND JURY.

REGINA *v.* PEDLAR.

Friendly Society — Alleged Embezzlement by Secretary—Carelessness or Fraud—Negligence not dishonesty—Case dismissed.

John Pedlar was charged with embezzling on August 19th, as Secretary of the Loyal Blinman Lodge, M.U., I.O.O.F., South Australian District, the sum of £46 2s. 6d., and pleaded not guilty. Mr. Wigley defended. Edwin James Heath, Deputy Registrar of Deeds, Adelaide, produced the rules and bye-laws of the M.U., I.O.O.F. (put in).

John James Doig, blacksmith, residing at Farina, deposed that he was a member of the Loyal Blinman Lodge, No. 82, M.U., I.O.O.F. The prisoner was employed as secretary of the lodge, and had the management of its financial affairs. Witness identified the minute-book (put in). As secretary and treasurer, prisoner's duties were to receive moneys due by the members, and as soon as the amount in his hands reached £10, to pay it into the lodge's credit at the Bank of Adelaide. Witness was appointed an auditor, and with a Mr. Tilman (another auditor) went on August 3rd last to Beltana to audit the lodge books. The prisoner promised to meet them at nine o'clock next morning, but did not come to the lodge room, and consequently they went to his private residence, and obtained from him several receipt books, a rough cash book, a contribution book and a ledger. They went through the books, made up the quarterly returns, and then sent for prisoner, who made up the half-yearly balance for May, 1886. They asked for vouchers of accounts prisoner said he had paid, and were told that two of them were missing. They asked for the bank-book, and were told that the auditors did not need it. The balance-sheet produced was the one made up by prisoner and shown to the auditors. It showed a balance in the bank of £42 2s. 6d. The prisoner told the auditors that he could not give them the bank book, and said he would send the books required after them. The audit was finished at Beltana later on, and showed a deficiency of £42 0s. 7d. according to witness's figures. They had several interviews with the prisoner, and told him what they had discovered. He said that he was very sorry, that he hoped it would be settled, and that he thought Mr. Murray, of Myrtle Springs, would help him. On September 6th witness saw prisoner, who asked if anything had been done to settle his case, and said that if he saw Mr. Murray and got the help he expected he would send witness a telegram. Witness did receive a telegram from prisoner (copy of telegram produced, but not put in).

By Mr. Wigley: The £46 0s. 7d. deficiency included the money represented by the two vouchers the prisoner could not produce. The persons represented as having received the money had been written to, and had replied that they had not received the money. Pedlar had told witness on August 14th last that he was in the habit of entering members' contributions as paid, in order to keep them "good on the books." He believed that the prisoner had once done this for him, when he had not forwarded his contribution in time. A man was "bad on the books" when he owed 11s. 8d.; and when he was £2 in arrears

his name was struck off. The lodge was almost defunct through the paucity of members. Pedlar had told him that he had kept it alive by entering members as paid up. A member named Power had left the district two or three years before. This man was good on the books; but who kept him good on the books witness did not know. Williams, the police camel-driver, ran out of membership just about the time Pedlar's secretaryship ceased. Pedlar stated at the time of the audit that he had been neglectful as a secretary, through other duties, and that he had entered members as paid up who had not paid their contributions.

By Mr. Mann: Prisoner did not produce the bank book to the auditors until he surrendered all the lodge books. There were 28 members on the roll, and only eight of them were "good" on the books when the audit was made.

Arthur Samuel Hodgson had acted as secretary of the Blinman Lodge at two meetings, but had received no money on those two evenings. He did not think the prisoner ever kept him (witness) good on the books. Prisoner would tell him when he was getting bad, and then witness paid up. They worked on the same train.

William Rogers was present when the prisoner was appointed secretary of the lodge. Prisoner had paid up money for him, or credited him with it, in order to keep him good on the books, and they had never had a complete settlement. He knew that Pedlar used to make a man good on the books when he was going bad. Prisoner paid 11s. for witness once, but witness afterwards gave him an equivalent for it.

Ernest Rowley, a clerk in the Bank of Adelaide, deposed to the correctness of a copy of entries in the bank ledger with regard to lodge's account, The entries were made in the regular course of business (document put in).

Prov. C.S. A. H. Beyer, the General Secretary of the M.U., I.O.O.F. in South Australia, deposed that he had examined the books of the Blinman Lodge and had discovered that there should be £46 2s. 6d. more to his credit in the Bank of Adelaide than was there.

M. C. Cahill deposed to the arrest of prisoner at Mannahill on February 25th.

The prisoner elected to make a statement, and said that he went as a stranger to Beltana, and was asked to take the secretaryship of the Foresters, and then of the Oddfellows, then of the Sports Committee. He had to make up the prize list of the latter, £26, somehow, and got muddled up in his accounts. He paid money on one account and another, and often out of his own pocket. He had held for five years an honourable position as guard on the railway line.

Mr. Wigley here interposed and addressed the jury on behalf of his client, urging that the latter had kept members good on the books by debiting himself with their contributions, though he had never received the money. This was in evidence, and one officer of the society had owned that money had been thus credited to him, and that there had not been a complete settlement between himself and prisoner yet. The prisoner, when the audit came on, knew very well that the books would

show more receipts than he had ever had, or banked. He had acknowledged his carelessness, but did not know he was criminally liable though he thought himself civilly liable for the deficiency, and said he would try to get the money from Mr. Murray in order that the society might lose nothing. He urged that his client had never embezzled any money, and that all he was guilty of was unthinking generosity to his fellow members and carelessness in keeping his accounts.

His Honour addressed the jury, and said there was a little difficulty in the case, in consequence of the wording of the clause under which the prisoner had been committed. The prisoner's client had not raised the point, nor had the Crown Prosecutor alluded to it; the question was whether the prisoner being charged as a "servant" of the lodge, could be held guilty unless the specific embezzlement of certain sums was proved; and he was not clear that the case in question had been otherwise provided for.

Mr. Mann said that there had been other convictions under the Act, and pointed out a more expansive clause under which the prisoner's offence could be taken cognizance of without specific embezzlement being shown.

His Honour accepted the clause pointed out, under the circumstances, but would reserve the point if the prisoner's counsel wished to appeal. He then addressed the jury on the evidence, pointing out that it was for them to decide upon the question of whether the deficiency shown to exist could have arisen in a lodge of 28 members, of whom the greater portion were not good on the books, through carelessness, or whether it was due to fraud. The deficiency was not disputed, but the prisoner's counsel maintained that his client had not received the money, but had credited members with payments that had not been actually made, in order to keep the lodge alive. The question of carelessness or fraud was very much one of comparative amount; a deficiency of £46 would not necessarily imply fraudulent embezzlement in a large lodge where thousands of pounds were concerned. It was for the jury to say whether the amount concerned in this case was, or was not, too large comparatively to be accounted for otherwise than by fraud.

The jury retired, and after about half an hour returned with a verdict of guilty, but strongly recommended the prisoner to mercy, because they did not believe his intentions were fraudulent.

His Honour pointed out to the jury that their verdict was equivalent to not guilty. The prisoner was charged with "fraudulently embezzling" the money, and the fact of his being short in his accounts did not necessarily imply that he had embezzled the deficiency. Embezzlement could not be committed without fraudulence.

A juror stated that it was their belief that the deficiency was due to the negligence of the prisoner and not to his dishonesty. They believed that he had jumbled up the accounts he had in charge, and did not know how he stood till the deficiency was made apparent by the audit, when he found that, according to the books, he ought to have more money in the bank on account of the lodge than he actually had.

His Honour said that as fraudulence was essential to embezzlement he must take the verdict as one of not guilty. The jury had taken a

merciful view of the case, and he hoped that it would be a lesson to the prisoner, and that he would never again touch money entrusted to him for specific purposes. (The prisoner said that the lesson had been a severe one.) His Honour then thanked the jury and discharged them.

CASE 89.

PONTEFRACT COUNTY COURT, *Before* JUDGE BEDWELL.

JOLLIFFE *v.* LOYAL AND INDEPENDENT ORDER OF ODDFELLOWS.

Friendly Society—Claim for Sick Pay—Medical Certificate disputed—Verdict for Plaintiff.

In this case the plaintiff, an old man named Jolliffe, a hawker, residing at Wortley, near Leeds, sued the Loyal and Independent Order of Oddfellows, at Brotherton, to recover the sum of £11, money due for sick pay. The plaintiff stated that he fell sick in September, 1887, and obtained a medical certificate from the Leeds Dispensary, which was duly forwarded to the secretary of the lodge to which he belonged at Brotherton. Certificates had been forwarded every 14 days from the medical staff of the Leeds Dispensary for several months, but yet the society refused to pay the amount of sick pay due unless plaintiff was examined by the lodge surgeon, Dr. Ward, of Brotherton. Plaintiff travelled twice to Brotherton to see the club doctor, who, on examination, refused to give him a certificate that he was unfit to follow his employment. He had been a member of the lodge for 40 years. The society was not connected with any Order such as the Manchester Unity, and had no Court of Appeal. His Honour dwelt on the necessity of friendly societies being attached to such Order where disputes could be settled by arbitration. His Honour examined the various certificates as forwarded from the medical officers at Leeds, all of which he said were regular with the exception of two. In giving a verdict for £10 with costs for the plaintiff, his Honour said he hoped it would be a lesson for such societies to appoint a court of arbitration.

CASE 90.

COURT OF APPEAL. *Before* THE MASTER OF THE ROLLS, LORD JUSTICE FRY, AND LORD JUSTICE LOPES. 1890. *May* 17.

GREEN AND OTHERS *v.* HENDRY AND OTHERS.

Friendly Societies Act, 1887, *section* 10—*Secession—Rules of Society—Certificate of principal Officer.*

This was an action for a mandamus brought by the trustees of the Old British Oak Lodge, No. 482, Leeds District, of the Ancient Noble Order of United Oddfellows, Bolton Unity, Friendly Society, to require the defendants, the trustees of the above society, by their proper officer to grant to the plaintiff's lodge a certificate of secession under section 10 of

the Friendly Societies Act, 1887, amending section 29 of the Friendly Societies Act, 1875. The certificate was required for production by the plaintiff's lodge to the Registrar of Friendly Societies in order that the plaintiff's lodge might be registered as an independent friendly society under the Friendly Societies Acts. The above society was established in 1832, and was now registered under the Friendly Societies Acts. The Old British Oak Lodge was established in 1865 at Leeds as a branch of this society, the Leeds District comprising many lodges, branches of the society. The constitution of the society or Order was that the various lodges were branches of a certain district, and the several districts were branches of the Order. In 1888 the Old British Oak Lodge was desirous of seceding from the society and of becoming an independent society, and on October 10th, 1888, the lodge passed a resolution for secession, and applied in writing for a certificate of secession. The society refused to grant a certificate upon the ground that under the rules the consent of the district must first be obtained before a lodge could secede. Rule 33, sub-section 1, of the rules of the Order deals with the case of a lodge being desirous of "seceding" at any time from the Order, and prescribes certain formalities to be gone through; sub-section 3 refers to a lodge seceding, breaking up, or becoming suspended; and sub-section 6 provides that "no branch (*i.e.* lodge) shall be allowed to break up without the consent of the district" and of the executive committee for the time being. The action was tried before Mr. Justice Mathew, who held that the consent of the district was not necessary to the "secession" of a lodge, and gave judgment for the plaintiffs.

The defendants appealed.

Mr. C. M. Atkinson and Mr. Mansfield, for the defendants, contended that sub-section 6 of rule 33, which required the consent of the district before a lodge could "break up," applied to the secession of a lodge. Unless this were so the rule as to consent being necessary to the lodge breaking up would be rendered futile, as a lodge could first secede, and then it might break up without any consent.

Mr. Finlay, Q.C., and Mr. A. Brown, for the plaintiffs, were not called upon.

The court dismissed the appeal.

The Master of the Rolls said there was a clear distinction drawn in rule 33 between a lodge "seceding" and "breaking up," what the actual difference between the two was he was not able upon his present information to say. Sub-section 6 of that rule was added by way of amendment, and that sub-section dealt only with "breaking up," and not with "secession." That left rule 33 as to seceding untouched by the amending sub-section, and so the consent of the district was not necessary. The only conditions precedent to a lodge seceding were the preliminary notices and the resolution being carried by the necessary majority. The plaintiff's lodge therefore had duly seceded, and they required the certificate of secession from the secretary of the society to enable them, after having seceded, to be registered as an independent society under the Friendly Societies Acts.

Fry, L. J., concurred. There were three things referred to in rule 33, secession, breaking up, and suspension. It was to be noticed that the rules of the district contained a similar distinction between

secession and dissolution, which latter word he took to be the same as breaking up. The rules of the district did not apply to the present case, as here the lodge was seceding from the Order, and not merely from the district; but it was useful to show that the distinction existed. What was the precise difference between seceding and breaking up it was not material to enquire into. Rule 33 made a distinction between the two, and, in his opinion, sub-section 6 which required the consent of the district dealt solely with breaking up and not with secession.

Lopes, L. J., said, that in rule 33 secession and breaking up were different things and the rule did not contemplate any consent of the district being necessary to the secession of a lodge.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *secs.* 21 *and* 78.

CASE 91.

QUEEN'S BENCH DIVISION. WRIGHT AND COLLINS, J. J. 1892. *Feb.* 26.

IN THE MATTER OF THE SHEFFIELD BRANCH OF THE ORDER OF DRUIDS FRIENDLY SOCIETY.

Friendly Society—Branch Society—Secession—Refusal of Certificate of Secession—Friendly Societies Act, 1887 (50 & 51 *Vic.*, *cap.* 56), *sec.* 10.

Judgment was given in this case as to the right of the Sheffield branch society to secede from the parent society and become registered as a separate society. The rules provide for such secession, but the rule requires a special general meeting, and also the assent of three-fourths of the members of the branch, and the sending in of certain accounts to the central office for the purpose of adjusting liabilities. The Sheffield District Society is very extensive, having 11,300 members, and assets or funds to the amount of nearly £30,000. Some disputes had arisen between the branch and central society, in consequence of which, in April last, the branch was, under a power in the rules, suspended. What was the exact effect of suspension was one of the numerous questions mooted in the case. It gave rise, however, to a desire for secession; and in June circulars were sent out by the district secretary to the secretaries of all the lodges of the district, with voting papers for the members, desiring their distribution for the purpose of collecting votes on the question of secession, and every lodge resolved in favour of secession, and thousands of voting papers were sent in, mostly for secession. On October 12th last, on a seven-day notice to each lodge, a special general meeting was held for the purpose of considering the question of secession. There were over 6,000 members present, and all but 11 were for secession. The voting papers were counted by an actuary and solicitor in the presence of the secretary, and a number of about 8,980 were for secession, and the result was declared at the meeting. This, of course, would be over three-fourths of the number of members, which would be 8,442; and the voting papers were verified by the existing register, which was made up to June 30, between which time and the meeting 450 new members had joined. The Friendly

Societies Acts, 1875 and 1887, provides an appeal against the refusal of a certificate of secession. There had been a demand of it and a blank refusal of it without any reason, and the branch society now appealed against the refusal.

Mr. E. Tindal Atkinson and Mr. Bray were for the branch society.

Mr. Bigham, Q.C., and Mr. Clare appeared for the Grand Secretary of the parent society.

Mr. Danckwerts appeared for 290 dissentient members, but the court, it will be seen, while hearing him, did not admit his *locus standi*.

The court had taken time to consider their judgment, and delivered it in favour of the branch society as to their right to secede.

Wright, J., in giving judgment, said: In this case there is a dispute between the central body and a branch society at Sheffield—the branch desiring to secede from the parent body, who object to their secession. The parent body is a very large organisation registered under the Friendly Societies Acts of 1875 and 1887, which provide for registration of the rules of any society, and give an appeal to the Queen's Bench Division against the refusal of the General Registrar to register the rules of any society. The Act of 1887, section 10, also provides that, where there is a new registered branch society, it shall not be registered except upon the production to the Chief Registrar of a certificate of the Chief Secretary or other chief officer of the parent society that the branch has wholly seceded, provided that there shall be the like appeal from the refusal of the certificate by the Chief Secretary as against the Registrar's refusal to register. Now, here there has been a request on the part of a Sheffield branch to the Chief Secretary of the parent society, and the month has elapsed which is allowed for him to give the certificate, and now the branch society come here to complain of its being withheld. Various technical objections were taken to their claim, which it is not necessary to enter into, and certainly it is not necessary that the parent society itself should institute an inquiry—no rule requires it. The rule provides that no branch of the society shall be allowed to secede without calling a special general meeting, with seven days notice; each member to be supplied with a form to fill up, stating what he assents to or dissents from; when, if three-fourths of the members of the branch are in favour of the secession the whole of the papers and accounts shall be sent to the central office, and the Committee of Management shall ascertain the liability of the remainder, and the funds shall be equally divided among the members. In April last a dispute arose between the parent society and the Sheffield branch, and the branch was suspended. It does not appear clearly what the consequences of suspension are. On June 11th, the Sheffield branch passed a resolution—"That, in the opinion of this meeting, the board of management, being illegally constituted, have acted in an arbitrary and unconstitutional manner by suspending this district society, and that this meeting appoint a committee to take the necessary steps to obtain secession." That was one of the steps in the delegation of power from the district meeting to a committee to carry out secession, and there was a complete devolution of such authority. The resolution having been passed, the sub-committee proceeded immediately on behalf of the committee to give effect to the resolution; and the first step taken was upon the next day, the 12th. It was put to us as though the proceeding began in October, but

in truth it began in June. On June 12th the sub-committee proceeded to send out papers to all the then members of the society. The rule provided that each member should be supplied with a form, and the first question that arose was, to what members were the papers to be sent? It was argued that, because 450 members joined after that date who had not received the papers, the rule had not been complied with. But it seems to me that, taking the proceeding as starting from June 12th, what was to be ascertained was the sense of the then existing members. Those were the members then interested; and as to those who joined afterwards I do not think it was necessary to take any notice of them in this proceeding. Then the committee, to carry out the proceeding, sent out the printed forms, inviting members to sign the appended statements showing their assent or dissent as to secession. The forms were to be sent to the lodges to which the members might belong. The district was divided into many lodges, and, the object being that the sense of the members should be ascertained, the sending of the voting papers, to be returned through the lodges, was a reasonable and sensible course, as the only way in which the central office could ascertain that the papers were returned by members entitled to return them. It seems to me that throughout the sub-committee proceeded to the very best of their judgment and ability to do what the rules required. They fixed the special general meeting to take place on October 12th, a time unnecessarily late, as they could have appointed any date within seven days notice after June 12th, but they thought it right to give a longer date in order to make sure that the sense of the society should be really taken. Then, during the months of June, July, August, and September, the voting papers came in, and on October 12th the special general meeting was held of all the members of the district (cards sent through the lodges being the cards of admission)—a meeting openly held, and from which it did not appear that any member was excluded who was entitled to be present; nor did it appear that any member had complained of exclusion or that there had been an exclusion of any whose exclusion would have affected the result. And, indeed, if the 450 new members were even entitled to be present and had been excluded, we should not infer that the result of their admission would have been to diminish the majority in favour of secession. For it appeared that the receipts for the quarter ending in October greatly exceeded the average, so that it may be inferred that the new members who had joined were in favour of secession and desired to belong to a separate society. Then the meeting was held, and though it was objected that it was not legally held, because by rule 33 it could not be held without the assent of the central body, it is obvious that that rule had no application. No other objection was taken to the constitution of the meeting; and there can be no doubt it was duly constituted. At that meeting 6,000 members were present, and they were almost unanimous. Before the meeting separated all the voting papers which had been sent in had been counted and carefully scrutinised by the secretary and verified by him—according to the register—and he announced to the meeting, with the sanction of the committee, what was the result of the votes thus sent in, and it appeared that even then, on the voting papers sent in previous to the meeting, there was a majority of the members—exceeding the three-fourths required—in favour of secession. So that on October 12th there was a resolution passed almost unanimously by a meeting of 6,000 members in favour of secession, and there was an announcement officially made at the meeting, and accepted by the authorities of the

district society, and at that date there was more than the requisite majority of voters in favour of secession. It is not to be doubted that there was the almost unanimous vote of the meeting and also the votes of three-fourths of the members of the district society in favour of secession. It is clear that without the assent of three-fourths of the members the vote of the special general meeting would have had no effect. There must be both the assent of the majority of the members and also the vote of the majority at the meeting. After the meeting further voting papers were sent in and received and counted and scrutinized, and ultimately the secretary, with the express sanction of the committee, proceeded to make out and count all the votes sent in, with the assistance of an actuary and a solicitor, and verified them carefully by the register, and the result was found and declared to be that there was a majority of about 600 beyond the requisite three-fourths of the members of the district. This having been ascertained, the district secretary took the papers to the "grand secretary" with the balance sheet for June (which was the right date to have regard to), and he afterwards took in the necessary accounts as to the number of sick members, &c., and these were received without any specific objection to their insufficiency or any specific request for any other papers. Then followed a request by the branch society for the certificate of secession, but it was refused, under the instructions of the Committee of Management, without any reasons being given for the refusal—a blank, positive refusal. Now, on the substance of the case, a stronger case can hardly be conceived, nor one in which the requirements of the rules could be supposed to be better carried out or more in accordance with their real end and object. Nor does it appear that anyone has the least right to object to the secession under any circumstances—there being this majority of the members in favour of it. The opposition to it was based on purely technical grounds. These matters are exceptionally difficult to regulate, whether by statutory enactments or rules. The rules of these societies are very loosely drawn, and it is obviously desirable under such circumstances to avoid technicality. The Friendly Societies Acts themselves are not drawn with much regard to technicality; they are obviously aimed at securing certain great general objects, as the vote of a general meeting and the assent of a majority of members, but they leave the members very much to do as they please as to mere matters of internal arrangement. And in cases of this kind it certainly would be wrong to give effect to mere technical objections, unless we can see that the substantial object has been affected. Now, here even if there was any irregularity there was none which could affect the substance of what was done nor prevent what was done from being the act and will of the majority. The only remaining point is one of some difficulty, as to the Committee of Management ascertaining the liabilities and dividing the funds among the members, on which it was objected that something remained to be done under the Act of 1887 before the complete secession could be certified. Now, I confess I cannot see what the meaning of these words is. But it certainly could not mean what was contended for the objectors—that the funds of the district society are to be divided among the members as if it were to be wound up. That would be contrary to the plain, obvious meaning of the rule as to secession; and if that part of it has that meaning it is clearly *ultra vires*, and beyond the powers of the society altogether. But if it has, as I should think it has, the more reasonable sense and meaning that the liabilities of the district society are to be ascertained, and the fair proportion of its funds in the hands of the parent society

allotted to it, that would be a condition in favour of the district society, and which they would be at liberty to waive. Nor can I see how it can be a condition precedent to complete secession. No such objection was raised by the central body; that is not the ground on which they objected, and it ought not to be raised now. If anything which they ought to have done has not been done, it is their own fault that they have not done it. The Sheffield branch did not prevent them from doing it, and on these grounds I do not think the objection ought to prevail, and therefore the order ought to be made without prejudice to any proceedings to carry out the object of the part of the rule referred to. I may add that the learned counsel (Mr. Danckwerts), who claimed a right to appear for dissentient members, did not establish his right to appear, nor did we give him any leave so to appear. We merely heard what he had to say—partly from our respect for him, and partly from a desire to derive any assistance we could from his argument.

Collins, J., said he was of the same opinion, and his learned brother had gone so fully into the facts, and he so entirely concurred in his reasons, that he had little to add. But he desired to say this—that it seemed to him the real substance of the matter was that it was satisfactorily shown that the statutory majority of the members desired secession. If that were satisfactorily established, he should be loth to find any technical objections which would have the effect of overriding the recorded will of the statutory majority. It was clear that at some time or other the certificate of secession could be demanded from the Grand Secretary, and here it was shown that there was an enormous majority in favour of the secession—about 9,000 out of 11,300 members. But various technical objections were taken by which the court was to be deterred from giving effect to the recorded will of the majority. Now it did not appear to him that under the rule it was essential that the majority should be at the beginning or the end of the proceedings. It seemed to him that, though the meeting was a condition precedent to the right to secede, there was nothing which made it necessary to take the votes of the members before the meeting, or that the final counting of the votes should take place at the meeting. This was not required, and he would not require it to defeat the will of the majority. It was a very difficult thing to get together a meeting of such a large society or to carry on the counting of the votes at such a meeting, and he thought the counting and verifying of the votes might well be left to the ordinary officers of the society. It was clear there was an enormous majority of the members in favour of secession; and as to new members joining after the 12th June, the line must be drawn at some time, and he thought it naturally drawn at that time. For the rest he entirely agreed with his learned brother, and so concurred in the conclusion that the order must be made.

Ordered accordingly that the Grand Secretary do give his certificate of the secession of the Sheffield branch.

CASE 92.

CHANCERY DIVISION. VICE CHANCELLOR HALL. 1877. *Feb.* 16.

IN RE BRYNMAWR COAL AND IRON COMPANY.

Resolution to wind-up—Majority in accordance with the Companies Act, 1862, *sec.* 52—*Declaration of Chairman of passing of Resolution conclusive evidence of fact.*

On Friday, the 9th instant, an order was made continuing, under the supervision of the court, the voluntary winding-up of this company, and the Vice-Chancellor directed that an affidavit should be filed stating that the resolution of the company had been passed by a majority in accordance with the statute. It now appeared that the required affidavit had not been filed; but the chairman of the meeting had declared that the voluntary resolution of the company for liquidation had been duly passed, and it was submitted that under section 52 of the Companies Act of 1862, that was conclusive evidence of the fact without any affidavit being necessary; it was at the same time stated that no affidavit as required could be obtained, as, in point of fact, it could not be proved that there was a majority, in accordance with the statute, of votes present, although if a poll had been demanded there would have been such majority.

Mr. Dickinson, Q.C., and Mr. Kirby, Mr. Hastings, Q.C., and Mr. Whitehorne and Mr. Key appeared for the parties.

The Vice-Chancellor held that the declaration of the chairman was sufficient evidence without any affidavit being filed.

CASE 93.

BACON, V.C. 1884. *Jan.* 19.

COURT OF APPEAL. *Feb.* 19.

IN RE INDIAN ZOEDONE COMPANY.

The chairman of a general meeting has *primâ facie* authority to decide all incidental questions which arise at such meetings, and necessarily require decision at the time, and the entry by him in the minute-book of the result of a poll, or of his decision of all such questions, although not conclusive, is *primâ facie* evidence of that result, or of the correctness of that decision, and the onus of displacing that evidence is thrown on those who impeach the entry.

Where the chairman at a confirmation meeting disallowed certain votes which had been given against the confirmation of a resolution passed at the first meeting appointing a liquidator, the effect of such disallowance being to confirm such resolution, and he made an entry in the minute-book that such resolution had been confirmed, the court, in the absence of evidence that the votes were improperly disallowed,

declined to question the decision of the chairman. But, having regard to the unsatisfactory state of the evidence, the Court of Appeal, in the interest of all parties, by its own order, confirmed the appointment of the liquidator.

CASE 94.

CHANCERY DIVISION.
BACON, V.C.
1886.
Feb. 9.

PEASE *v.* PATTINSON.

Charity—Friendly Society—Cy-près—Charitable Fund—"Voluntary Contributions"—Action—Charity Commissioners—Consent—Exemption—Charitable Trusts Act, 1853 (16 & 17 *Vic.*, *c.* 137), *ss.* 17, 62 [*Revised Edition Statutes, Vol. XI., pp.* 986, 999]—*A friendly society held to be a charity.*

In 1862, on the occasion of an accident at the Hartley Colliery, in Northumberland, a fund was raised by voluntary subscriptions and vested in trustees for the relief of the sufferers and their families. There being an ultimate surplus, the managers of the fund proposed to apportion it among several mining districts, including South Durham, for the relief of suffering occasioned by colliery accidents in those districts, and in aid of relief funds already in operation there.

By the rules of a Miners' Relief Fund Friendly Society established in 1862 for certain counties, including the county of Durham, provision was made for raising funds by voluntary subscription among the members (required to be persons employed in coal and other mines), and by donations, for defraying the funeral expenses of members, supporting their families, assisting members disabled by accident, old age or infirmity, and for payment of a sum at the death of a member.

Held, in an action by the surviving trustee of the Hartley Colliery Fund, that the friendly society was a "charity," and that that portion of the fund intended for the South Durham district might be applied *cy-près* by payment to four of the trustees of the friendly society, to be applied by them, according to the rules of the society, for the relief of suffering occasioned by colliery accidents in the South Durham district, and for no other purpose.

Held also, that the Hartley Colliery Fund, being a fund arising wholly from "voluntary contributions," was exempted by section 62 of the Charitable Trusts Act, 1853, from the operation of the Act, and that, therefore, the consent of the Charity Commissioners to the action, under section 17, was unnecessary.

CASE 95.

CHANCERY DIVISION.
CHITTY, J.
1894.
May 8, 9.
Nov. 28.
1895.
Feb. 20.
COURT OF APPEAL.
1895.
Nov. 4.
1896.
Aug. 3.

CUNNACK *v.* EDWARDS.

Friendly Society—Objects of Society exhausted—Unexpended funds — Charity — Cy-près — Bona Vacantia — Resulting trust.

In 1810 a society was established to raise a fund, by the subscriptions, fines, and forfeitures of its members, to provide annuities for the widows of its deceased members. In 1830 the rules were revised, and the society conformed to the provisions of the Friendly Societies Act, 1829, but the objects of the society were in no way altered. In 1848, E. became a member, and remained a member till 1878, when he died a widower. E. was the last surviving member. The last honorary member, who on joining disclaimed all benefit of the society for his widow, died in 1879. The last annuitant died in 1892.

The legal personal representative of E. having claimed the unexpended funds of the society, amounting to £1,250.

Held (Chitty, J.) that the society was not a charitable institution to which the doctrine of *cy-près* could be applied, and that on this point the fact that there were honorary members, whose donations were applicable for the benefit of the widows of members, made no difference; that the representatives of E., the surviving member, were not entitled to the funds, neither was the Crown entitled to them as *bona vacantia*, but that there was a resulting trust in favour of the members of the society from time to time, or their respective legal personal representatives, in shares, in proportion to the amounts contributed by each member to the funds of the society.

Held (on appeal) that there was no resulting trust in favour of the legal personal representatives of the members of the society; that the society was not a "Charity," and therefore the unexpended fund was not applicable *cy-près* to charitable purposes; and that the fund passed to the Crown as *bona vacantia*.

Decision of Chitty, J. reversed.

Action by trustees of a fund to obtain the direction of the court.

In March, 1810, a society called the Helston Equitable Annuitants Society was established at Helston, in Cornwall, for the purpose as expressed in its rules, of raising from time to time by the subscriptions of the several persons admitted members thereof, and also by the fines and forfeitures by the rules of the society imposed, a stock or fund for the relief of the widows of the deceased members of that society.

In April, 1830, the rules then in force were revised, and the society subsequently conformed to the provisions of the Friendly Societies Acts, 1829 (10 Geo. IV. c. 56). By rule 16 it was provided that the moneys arising from subscriptions, fines, forfeitures and otherwise (after defraying the expense of books and other incidental charges) should form the capital stock or fund of the society, and should from time to time be invested by the treasurer, in the names of the trustees for the time being, in some or one of the Government funds, or invested in or advanced on such other security, pursuant to 10 Geo. IV. c. 56, as should be approved of by a majority of the said managing committee, or by a majority of the said society at any of the two general meetings thereafter mentioned, or at any special general meeting to be held as therein provided. Rule 17 provided that the trustees (who were to be annually elected) should from time to time execute a deed declaring the purpose for which any moneys were laid out. No such deed, however, was ever executed. Rule 35 provided that on the death of any member, after having been admitted four years, and having paid his annual contributions and other payments required by the rules and conformed to the same in all respects, his widow should be entitled to such an annuity as was set forth in the table for that purpose provided, so long as she should continue a widow.

The society consisted of ordinary and honorary members. In 1848, one T. H. Edwards became an ordinary member, and remained a member until his death in 1878, when he died a widower, and was the last surviving ordinary member. It appeared that all the other members had predeceased him, except Sir R. Vyvyan, an honorary member, and it was believed the only honorary member of the society, who on joining the society had signed a declaration that his object in joining the society was not that any widow of his should claim any benefit therefrom (to which he altogether relinquished his right), but merely for the encouragement of the society. Sir R. Vyvyan died in 1879. No attempt to wind up or dissolve the society had ever been made; the books of the society, prior to 1850, were stated to have been lost. The rules contained no provisions as to the ultimate disposition of any unexpended funds (if any) after paying all the annuities.

The last annuitant on the society died in 1892.

The legal personal representative of Mr. T. H. Edwards having claimed the unexpended funds of the society, amounting to £1,250 New Consols, the present action was commenced by the surviving trustees of the society against Edward's representative and the Attorney General, for the purpose of having the disposition of the fund decided by the court.

The Attorney General contended, that either the society was a charity, and that the funds were applicable *cy-près*; or, in the alternative, that the funds were ownerless, and went, as *bona vacantia*, to the Crown.

The action came on for trial on the 8th and 9th May, 1894, when the only point argued was whether the society was a charity.

Mr. Robertson Macdonald, for the plaintiffs, the trustees, stated the facts of the case, and disclaimed any beneficial interest.

Mr. Farwell, Q.C., and Mr. W. D. Rawlins, for the defendant, the legal personal representative of T. H. Edwards:—This is nothing more than a friendly society for the purpose of providing for the widows of its members. A friendly society is not a charitable institution: In *re* Clarke's Trust; and, therefore, the fund cannot be applied *cy-près*. [They also cited In *re* Dutton].

Mr. Ingle Joyce, for the Attorney-General: In *re* Clarke's Trust went too far, and is not now good law.

A friendly society of this kind may be a charity: Spiller *v.* Maude. Pease *v.* Pattinson; poverty is not a necessary ingredient in all charities. The subscriptions of honorary members go towards providing annuities for the widows of ordinary members; the society is, therefore, partly supported by voluntary contributions, and is therefore a charitable institution, and this fund ought to be applied *cy-près*.

Chitty, J.: The Attorney-General claims this fund on one of two grounds, first, that there is a charity to which the ordinary doctrine of *cy-près* applies; and secondly, that the property falls under the head of *bona vacantia*. I propose to say nothing on the latter point, for that remains to be argued later on, and to deal with the first point only, as to whether this society is a charity.

[Having shortly stated the facts, his lordship continued] It appears to me that the society, subject to one point which I will mention in a moment, was a society established for the purpose of providing annuities for the widows of the contracting members, according to the rates that are laid down in the table attached to the rules. I can find in that no charity, There is nothing in the rules to show, nor is there any evidence, that the widows who were to be provided for, were to be widows of poor persons, indeed, Mr. Ingle Joyce, in his argument, admitted that many of them seem to have been well-to-do persons.

It is not necessary for me in this judgment to affirm the proposition laid down by In *re* Clarke's Trust, where Vice-Chancellor Hall held that a friendly society was not a charitable institution; it is enough for me to say that, in my opinion, this particular society is not a charity.

I said I would mention one point on which some argument turned on this question of charity, namely, the existence of honorary members. There certainly was one honorary member, Sir R. Vyvyan, and there may have been more. I have before me the form of declaration signed by honorary members, on which it is argued for the Attorney-General that the declaration shows that not only benevolent persons, but charitable persons were subscribing for the benefit of the widows of others generally. The declaration states that the object of the honorary member joining the society was, not that any widow of his should derive any benefit therefrom, which was altogether disclaimed, but "merely for the encouragement of the society." So there was at least one member (there may have been more) who relinquished all right, which he otherwise would have had, in favour of his own widow, and left the widows of the other members to be provided for according to the rules. He agreed, in fact, that his subscriptions or donations should go towards forming a fund which would provide annuities for others. It appears to me that this does not show that the society was a charity. Again, as I have already said, poverty was not made a qualification on

the part of any widow to get her an annuity; it was the annuity provided by particular persons who agreed to become members; and I think the fact that one or two, or it may be more, agreed that their widows should not participate in the benefits of the society is not sufficient to make it a charity. No order will be drawn up now, but I will direct the action to stand over on the question of *bona vacantia*, with liberty to amend by adding as parties the legal personal representatives of Sir R. Vyvyan (unless they disclaim) and of some ordinary member who died a member of the society.

The representatives of Sir R. Vyvyan having disclaimed all interest in the fund, and one Clarke having been added to represent the representatives of deceased ordinary members as a body, the action came on for further argument on the 28th November, 1894.

Mr. Robertson Macdonald for the plaintiffs, Mr. Farwell, Q.C., and Mr. W. D. Rawlins for the defendant Edwards.

It was open to the members to deal with the funds as their own; but as they did not do this and Edwards was the surviving ordinary member he became entitled to the fund, subject to providing for any existing annuities.

[Chitty, J.: There is nothing in the rules showing this to be in the nature of a tontine society.]

There is nothing in the rules as to the disposition of the funds except to provide for annuities; subject to this, the members for the time being are entitled to the fund and may divide it among them: Brown *v.* Dale. If the members are entitled, the surviving member is entitled by survivorship. He might have held a meeting under section 26 of 10 Geo. IV., c. 56, and voted the fund to himself. If the surviving member is not entitled to the whole fund, then there is a resulting trust for all the members, and we should be entitled to our share—at any rate, to the extent of our subscriptions and fines. It is not a case of *bona vacantia*, and the Crown has no right to this fund.

Mr. Tweedy, for representatives of deceased ordinary members:

There is a resulting trust in favour of all the members in proportion to their contributions and fines.

Mr. Ingle Joyce (Sir R. T. Reid, A.G., with him) for the Crown: This is a case of a fund held by trustees upon a trust without any specific purpose for which it can be applied, with the result that the money belongs to the Crown. This society was nothing more than a club, in which the members had no transmissible interest: In *re* St. James' Club. Whatever the members, or the surviving member, might have done while alive, when they died their interest in the assets of the club died with them. The earlier deceased members have had all the benefit they bargained for when they joined—their widows having received their annuities. When Edwards was alive he and Sir R. Vyvyan might have dissolved the society in the statutory way and voted themselves the funds; but they did not do so. As a fact, Sir R. Vyvyan was the surviving member, and his representatives disclaim all beneficial interest; still he had just as much right to this fund as Edwards. Under the Friendly Societies Act, 1829, s. 26, every member was entitled to a vote on a dissolution, and the Act of 1875 (38 & 39 Vic., c. 60), s. 25, requires

the consent of five-sixths of the members including honorary members. There is no resulting trust; there was no transmissible interest in any member; they only contracted for an annuity for their widows. All the annuitants have been paid and the trusts of the funds are now exhausted, and what is left goes to the Crown as *bona vacantia*.

February 20th, 1895.

Chitty, J.: The question is, who, in the events which have happened, are entitled in equity to the funds in the hands of the plaintiffs, the trustees of the Helston Equitable Annuitant Society, which funds represent the remaining property of that society? The only rules of the society in existence are the revised rules of 1830. The only object of the society was to raise a fund to provide annuities for the widows of members. The fund was to be raised by the contributions of members, varying according to the age of the member and the age of his wife, where she was younger than he. Certain fines and forfeitures were also imposed, which went to the increase of the fund. According to the evidence, the remaining funds represent contributions only. The last annuitant on the fund died in 1892. On her death, the trusts affecting the fund, according to the rules, were exhausted. The last surviving ordinary member of the society died in 1878; his representative is a defendant to the action. The rules admitted honorary members; they paid no contributions. The only honorary member outlived the last surviving ordinary member. The representative of the honorary member has disclaimed. The Attorney General claimed that the society was a public charity in the technical sense of the term, and asked that the funds might be applied *cy-près*. It was impossible, however, to accede to this claim, though it might have afforded a reasonable solution of the difficulties and have produced the best result for all concerned. I have already decided against the claim. The trustees of the fund very properly disclaim all beneficial interest. The claimants are, first, the representative of the surviving ordinary member; secondly, the Attorney General, on behalf of the Crown; and thirdly, the representative of a deceased member, appointed to represent for the purpose of this hearing all the deceased ordinary members as a body. The claim of the representative of the last surviving member may be disposed of in a few words. The society was not a tontine society, and there is no ground for saying that the fund belonged in equity to the last survivor. There is nothing in the rules, or in any principle of equity, applicable to the case on which this claim can be rested. It was said that the last surviving member might have held a meeting under section 26 of the statute of Geo. IV., and voted the funds to himself. To this proposition, extravagant as it is, it is sufficient answer to say that the last survivor never attempted to do anything of the kind. The contention of the Attorney General was that the funds were *bona vacantia*, and that the Crown was entitled to them by virtue of its prerogative. It is in virtue of this prerogative right that the Crown takes the personal estate of a man who, being a bastard, dies intestate without leaving issue. Such a bastard can have no next-of-kin. The Crown's right attaches on proof of the bastardy, and no lawful issue of the bastard—subject, of course, to the right of any widow he may have left. But in the case of the death intestate of a person born in wedlock, the Crown does not take merely because there is a difficulty in finding the next-of-kin; an inquiry is directed, and sometimes repeated, to ascertain who are the next-of-kin, and it is not until every reasonable step, by advertisement and otherwise, has been taken that the fund is ordered to be paid to the Crown.

The mere fact that there will be great difficulty and expense in ascertaining the equitable owner of a fund is not of itself ground for declaring the Crown entitled. The claim of the person appointed to represent the deceased members generally is founded upon the doctrine of resulting trust. Where a man provides a fund by way of trust for payment of a specified annuity to his widow during her life, and makes no further declaration of trust affecting the fund, the beneficial interest in the fund, or so much of it as is not required for payment of the annuity, results to himself. The same doctrine would apply to the case of several persons agreeing to provide and providing such annuities for their widows; there would be an ultimate trust in their favour when the purposes of the fund had come to an end. Nor can I see how any difference could justly be made by reason of their raising by common agreement such a fund in different but prescribed proportions as among themselves. Inasmuch, then, as all the purposes for which the funds of the society were raised by contributions of the members have been exhausted, and there is no indication to be found in the rules as to what was to be done with the funds when the specified purposes were worked out, I am constrained to hold, according to the principles of equity, that the doctrine of resulting trust applies. It is immaterial that no actual declaration of trust was made by the trustees in pursuance of rule 17 of the society. Had any such declaration been actually made, the only trusts which could properly have been declared by the trustee would have been those manifested by the rules. Nor is it necessary to consider what could have been done by a general meeting of the members under section 26 of the Act of Geo. IV. No such meeting was ever held. My reasons for saying I am constrained to hold that the doctrine of resulting trust applies are to be found in what follows. The books of the society prior to 1850 are not forthcoming, and apparently are lost or destroyed. The number of members of the society from the beginning, in 1810, is not known beyond this, that it exceeds several hundreds. The difficulty and expense of ascertaining who were members and who are their legal personal representatives will be enormous. Besides this, inasmuch as the contributions were of varying amounts, the share of each representative in the funds will depend not merely on the amount of the contribution of the member whom he represents, but also on the various amounts contributed during upwards of eighty years by the other members from time to time. It requires no great experience in matters of this kind to foresee, as I do, that in the endeavour to discover who are the persons entitled, the greater part, and probably the whole of the funds will be consumed in costs. There are no means at my disposal for cutting this Gordian knot. I have been informed that there are other similar cases which may be brought before the court for decision, and that possibly an attempt may be made to induce Parliament to intervene by passing some bill, but I know not whether the information is correct. My judgment has been postponed in the hope that the assistance of the legislature might be invoked; but in this hope I cannot further postpone giving judgment in the action. I therefore make a declaration that in the events which have happened the funds are subject to a resulting trust in favour of the ordinary members of the society from time to time, or their respective legal representatives, in shares in proportion to the amounts contributed by each ordinary member to the funds of the society. The amounts, if any, paid as fines or forfeitures, and the annuities received by widows, need not be taken into account. There must be a direction for necessary inquiries on the basis of the declaration.

1895. *Nov.* 4. Appeal by the Crown from the decision of Chitty, J.

1896. *Aug.* 3. The facts are sufficiently stated in the report of the case in the court below.

The appeal was heard on November 4, 1895.

On the appeal the defendant Edwards, the legal personal representative of T. H. Edwards, the last surviving ordinary member of the society, abandoned his exclusive claim to the unexpended fund, and he and the other defendant Clarke, who, as is stated in the report in the court below, had been added as defendant to represent the legal personal representatives of the deceased ordinary members as a body, now appeared by the same counsel.

Mr. Ingle Joyce (Sir R. E. Webster, A.G., with him), for the Crown, repeated the arguments urged by him in the court below, and, in addition to the cases there cited, referred to Collinson *v.* Pater and also to Lewin on Trusts, 9th Ed., p. 150.

Mr. Robertson-Macdonald, for the plaintiffs, the trustees of the society; Mr. Farwell, Q.C., and Mr. W. D. Rawlins for the defendants.

1896, August 3.

Lord Halsbury, L.C.: In the year 1810 a certain number of persons associated themselves together for the purpose of providing for their widows. They were not incorporated, and though they obtained some of the advantages which are involved in incorporation—inasmuch as they came under the protection of the Friendly Societies Acts—I do not think, for the purpose of this inquiry, those facts are important. The question which the court has to determine would, I think, have remained the same if they had been simply an associated body of persons for the purpose which I have described. The society has lasted to a very recent period, but is now extinct. All the members are dead, but a remnant of the common fund, amounting to something over £1,200 now remains. Chitty, J., has held that there is a resulting trust in favour of the personal representatives of those who contributed to the fund. I think we are all of opinion that that view cannot be maintained. The entire beneficial interest has been exhausted in respect of each contributor. It was, as I shall have to repeat in another view of the case, a perfectly business-like arrangement; each man contributed a certain sum of money to a common fund upon the bargain that his widow was to receive, upon terms definitely settled, a certain annuity proportionate to the time during which the husband had contributed to the common fund. There never was and there never could be any interest remaining in the contributor other than the right that his wife, if she survived him, should become entitled to a widow's portion thus provided. This was the final and exhaustive destination of all the sums contributed to the common fund. Under these circumstances, I am at a loss to see what room there is for the contention that there is any resulting trust. It is contended, however, that this association may be regarded as a charity. Wide as has been the meaning given to the word "charity" in the Court of Chancery, and, indeed, in one case by the House of Lords, a width of interpretation which I confess has seemed to me in some cases extravagant, I do not think that a perfectly business-like arrangement like this, in which a number of persons associate together and contribute funds to provide for their own widows, has ever been

regarded as charity. I think the observations of Hall, V.C., in In *re* Clarke's Trust are entitled to great weight. His observations were directed to a society whose members were to provide by subscriptions and fines a fund to be distributed for their mutual benefit in cases of sickness, lameness, or old age. In Pease *v.* Pattinson and Spiller *v.* Maude it was assumed by the learned judges in those cases, whether rightly or wrongly it is immaterial to consider, that the relief of poverty and suffering formed one of the elements of the associations therein discussed. Here no such question can possibly arise; it cannot be pretended that a wealthy widow would not be entitled to claim her annuity equally with a poor one. If this be a charitable institution it would be difficult to contend that every life insurance company did not fall under the same category.

I am, therefore, of opinion that this was not a charitable institution. The only other alternative remaining is that which I adopt, namely, that these funds are *bona vacantia*, and belong to the Crown in that character.

A. L. Smith, L.J.: Chitty, J., has decided that in this case there existed no gift expressing a general intent of charity so that the fund in question could be applied *cy-près* for charitable purposes; also that the Crown did not take the fund as *bona vacantia*; and he held that there existed a resulting trust in favour of the personal representatives of all those who had been subscribers to the fund, and he directed inquiries accordingly. The fund was started in 1810. The last surviving ordinary member died in 1878, the last honorary member in 1879, and the last widow in 1892, at which time the trustees of the society had £1,250 in hand undisposed of. The question is, what is to become of this fund? In order to determine if there be a resulting trust, it is necessary to ascertain what were the conditions under which each subscriber subscribed to the fund. In the year 1810 certain persons in the town of Helston formed themselves into a society called the Helston Equitable Annuitant Society, and agreed *inter se* that they would subscribe to a common fund out of which each member's widow should be provided for to the maximum extent of £25 per annum during her widowhood. Each subscriber to this common fund (I am not now dealing with honorary members) did so upon the terms that if he left a widow the trustees of the society should out of that fund provide for her in the prescribed manner during her widowhood. If a member died leaving no widow, there was no resulting trust in favour of his personal representatives upon his death; his subscriptions were not to be returned to them, but were to remain with the society and form part of its common fund. If a member left a widow she was to be provided for during her widowhood, and although the amount of subscriptions the member had paid might possibly not have been exhausted by making the contemplated provision for his widow, nevertheless the surplus was not to be returned to his personal representatives when the widow died, but the whole beneficial interest in what was left also formed part of the common fund of the society. In neither case was there any resulting trust in favour of the representatives of the deceased member.

But it was argued that the proper implication is that when the society itself came to an end, as it has done, there was then a resulting trust of what might happen to be in the coffers of the society in favour of all the personal representatives of those who had been members since the year 1810, and Chitty, J., has so held.

Now it was never contemplated that the society would come to an end; but, on the contrary, provision was made for the introduction of new members and for its perpetual existence; and the existing members had power to alter and revise the rules, so that, if it was found that the society was too affluent, provision might be made as to what was to be done with what money might not be wanted. As the member paid his money to the society, so he divested himself of all interest in this money for ever, with this one reservation, that if the member left a widow she was to be provided for during her widowhood. Except as to this he abandoned and gave up the money for ever. The case of Smith *v.* Cooke, in which it was held there was no resulting trust, shows the principle applicable to such a point. In my opinion this case cannot be likened to that of a man providing a fund by way of trust for the payment of an annuity to his widow during her life, and making no provision for the fund when the widow died and her interest therein ceased, in which case there would be a resulting trust, because the implication in such a case would be that the settlor intended that when the trust came to an end the fund should revert to his representatives, he not having provided to whom it should then go. In such a case there would be no abandonment of the fund as in the present case. In my opinion there was no resulting trust in favour of all those members who had ever subscribed to the fund. The question then arises, to whom does the £1,250 belong? It is admitted it does not belong to the society, for its objects have come to an end; nor to the trustees of the society, nor to the representatives of the last surviving subscriber; and as, for the reasons above, it does not belong to the representatives of the members who have subscribed since 1810, all possible claimants being exhausted, it belongs to the Crown as *bona vacantia* unless the doctrine of *cy-près* is to be applied, as where there is a trust which manifests a general intention to devote a fund to charity. The question is, do the facts of this case show such a trust? The society, it will be noticed, was not a corporation. It had no entity different from that of each of its members. Take the society as it originally existed in 1810 down to 1830, before it adopted the Friendly Societies Act of 1829; during that period what was the object and intention of each member joining and becoming a member of the society? Was his object to aid the widows of the other members, or only to aid his own particular widow? I cannot doubt that his sole and real object was that by becoming a member he might thus be enabled to provide for his widow more efficiently than he otherwise would have been able to do. Some of the members appear to have been of position and importance in Helston, one having been, it was stated, twice mayor, one a solicitor, and others tradesmen of the town. His object and intention in becoming a member was not to provide for the widows of other members; that was not his object at all. It was simply and solely to make a provision for his own widow, not only by means of his own subscriptions, but also by means of the subscriptions of those members who might happen to die leaving no widows, or whose widows might die shortly after becoming widows, so augmenting the common fund, together with what might be obtained by means of the subscriptions of such honorary members as could be induced to subscribe. What each man did in becoming a member was to set up and keep going a sort of mutual insurance whereby to insure a better provision for his own widow after his death than he otherwise would have been able to make.

Now, has such an act as this ever been held to manifest a general

intention to devote a fund to charity, or indeed to constitute charity at all? I am aware that there are many objects besides those enumerated as charitable objects in the preamble to the Statute of Elizabeth (43 Eliz., c. 4), of which providing for one's own widow is not one which the courts have held to be charitable and of a public nature, either as being analogous to the enumerated objects or by being within the spirit and intent of the Act; and the recent case in the House of Lords of Commissioners for Special Purposes of the Income Tax *v.* Pemsel shows that this is so; but nothing can be found in that case which gives countenance to the argument that a man, by providing a fund for the benefit of his own wife after his death, creates a charitable trust for a public purpose. There are, it is true, cases in which a gift to widows and orphans of a parish, to widows of seamen of a particular port, to twenty aged widows and spinsters, to the widows of respectable tradesmen, to poor relations generally, have been held to show a general intention of charity; but these are gifts to a class, and very different from a gift to a man's own wife to take effect after his death. No case has been cited, nor can I find one, in which such a gift has been held to be charitable, to which *cy-près* applies.

It has been pointed out that the members of the Helston Society altered its rules in 1830 so as to conform with the provisions of the Friendly Societies Act, 1829 (10 Geo. IV., c. 56); but I cannot see that by so doing they created a charitable trust for a public purpose if they had not done so before. What the society was before the adoption of the Friendly Societies Act as regards being a charity for a public purpose, so it remained, the provisions of that Act, as it appears to me, having been adopted, not for the purpose of altering the objects of its members, but for purposes of administration. To hold in this case that each member must be taken to have created a charitable trust for the public benefit of the place where his widow might happen to reside after his death, because his widow might otherwise have possibly gone upon the rates of that place, is to me, with all submission, so far fetched that I cannot adopt it. It appears to me to be stretching beyond all bounds anything that has been held before to hold that this is a charitable trust for a public purpose; and for the reasons I have endeavoured to give I agree with Chitty, J., and hold that it is not.

In my judgment the Crown is entitled to the £1,250 as *bona vacantia*, and it should be so declared, and the costs of all parties should come out of the fund.

Rigby, L. J.: In this case we have to determine the ownership of a fund of £1,250, the whole remaining property which formerly belonged to a friendly society called the Helston Equitable Annuitant Society. All claims on the society have been satisfied, and the society itself has ceased to exist by reason of the death of all its members.

The learned judge, from whose judgment this appeal has been brought, has held that there is a resulting trust in favour of all members of the society from its commencement, or their personal representatives, in proportion to the respective contributions made by the members. The members of the society might be ordinary and honorary members as afterwards explained. In the court below the personal representative of T. H. Edwards, the last surviving ordinary member, who died in 1878, claimed that he as survivor was entitled to the whole fund; but on the appeal this claim was not urged, and the personal representative

of Edwards joined in supporting the judgment of the learned judge in favour of members generally. The last surviving member was an honorary member, Sir R. Vyvyan, who died in 1879. His personal representatives have disclaimed all interest in the fund.

On behalf of the Attorney-General, the fund was claimed for the Crown as *bona vacantia*; and as an alternative case—though this, I think, was not before us argued as the main point—it was argued that the fund is a charitable fund and ought to be applied *cy-près* for charitable purposes. I do not feel sure that, if the case had come before me for the first time, sitting alone, I should not have held the society a charity. This conclusion, however, would have been founded upon a number of reasons, no one of which would have been conclusive in itself, derived from the special rules of the society, and indications contained in the statutes regulating friendly societies during the existence of this society and now repealed; and I do not think that I ought, in such a case, to differ from the learned judge in the court below and my colleagues in this court, and I say nothing more on the point. [His lordship then stated the facts, and, after reading the rules of the society, proceeded :—]

The provisions of the Friendly Societies Act, 1829 (10 Geo. IV. c. 56), which appear material for consideration on the question whether there is a resulting trust, may be summarized as follows :—

Section 3 makes it obligatory on every society established under the Act, before confirmation of the rules by justices, as afterwards directed, to declare, by one or more of the rules to be confirmed, all and every the intents and purposes for which the society is intended to be established, and by such rules to direct all and every the uses and purposes to which the money which shall from time to time be subscribed, paid or given to or for the use or benefit of such society, or which shall arise therefrom, or in anywise shall belong to the society, shall be appropriated and applied, and in what circumstances any member of the society or other person shall become entitled to any part thereof.

Section 8 provides for the rules, when confirmed, becoming binding on the members and officers of the society and the several contributories thereto.

Section 26 provides for the dissolution of the society, and, among other things, that it shall not be lawful for the society, by any rule made on the dissolution or determination, to direct the division or distribution of any part of the stock or fund to or amongst the members other than for carrying into effect the general intents and purposes of the society declared by them and confirmed by the justices.

Section 39 provides that the Act is to extend to all friendly societies thereafter to be established, and also to societies already established, as soon as they should think fit to conform to it. The Act of 1829 appears to have remained in force until repealed with other Acts by 13 & 14 Vic., c. 115, but the repealed Acts remained in force, subject to immaterial exceptions, with reference to societies formed under them.

In my judgment there is no resulting trust in the present case on the following grounds. All the contributions of ordinary and honorary members, and all fines and forfeitures, are to go into one common fund.

Probably, even if all the accounts of the society from the year 1810 were in existence, it would be impossible to follow the destination of the particular contributions made by each member, or to separate them from the voluntary contributions and funds arising from fines and forfeitures.

All the books of the society up to the year 1850 have, however, been lost, and there is nothing to show how far the £1,250 remaining has been made up of contributions of honorary members, or of fines or forfeitures, or what contributions of ordinary members form part of it. Probably the only safe inference is that the contributions of members, for many years after the establishment of the society, have long ago been entirely expended in payments to widows of former members, or for other purposes of the society, and that the £1,250 contains no part of such earlier contributions.

The members were not *cestuis que* trust of the funds or of any part thereof, but persons who, under contracts or quasi-contracts with the society, secured for valuable consideration certain contingent benefits for their widows which could be enforced by the widows in manner provided by the Acts. Any surplus would, according to the scheme of the rules, be properly used up (under appropriate amendments of the rules) either in payment of larger annuities or in reduction of contributions. It is true that no such alterations were made, and it is now too late so to distribute the funds; but I do not think that such omission can give to the contracting parties any benefit which they did not bargain for.

The rules, which, according to the Act, are to state all the uses of the stock, contain no provision in favour of members.

It is difficult to see why the personal representatives of deceased members should be entitled to any money produced by voluntary contributions, fines and forfeitures, but no doctrine of resulting trust would entitle them.

On the whole, I conclude that there is no resulting trust.

CASE 96.

SELBY POLICE COURT. 1888. *July* 24.

REGINA *v.* SPINK.

Friendly Society—Alleged attempt to cheat and defraud—Case dismissed.

At the Selby Police Court, on the 24th July, 1888, before W. H. Nicholson, Henry Liversidge, and J. Todd, Esqrs., and the Rev. B. Hensworth, George Henry Spink, solicitor, Pontefract, was charged on two separate informations with obtaining £100 on the 15th May, 1888, and £150 on the 1st December, 1887, from George Clapham, of Monkfryston, farmer, by means of false pretences and with intent to cheat and defraud him and others of the same. Mr. Law, barrister-at-law, instructed by Mr. J. C. Rhodes, solicitor, Sherburn, appeared for the prosecution, and Mr. Kershaw, barrister-at-law, appeared for the defendant. The charge as to the £100 was then taken. Mr. Law, in opening the case, said the prosecutor, who resided at Monkfryston, was

one of the trustees of the Loyal Victoria Lodge of Oddfellows, M.U., Monkfryston, as was also the defendant. Some time previous to the 15th May, 1886, defendant applied to him, as one of such trustees, for an advance to himself of £100 on some property at Ferrybridge, which he represented was free and unincumbered, and that sum was eventually agreed to be advanced, defendant acting as solicitor for himself and the trustees of the lodge. It has since been discovered that the property was in mortgage to Mr. Joseph Dawson, fishmonger, Pontefract, for £450, at the time defendant represented it to be free and unincumbered, and if, at the time the £100 was obtained, Mr. Clapham believed from defendant's representations that the property was free and unincumbered, then that was obtaining money by false pretences. Mr. George Clapham was called, and stated that he was one of the trustees of Monkfryston Loyal Victoria Lodge of Oddfellows, M.U., a duly registered friendly society. He knew the defendant, who was also one of the trustees of the same society. In May, 1886, defendant made application to him for £100 upon his own property at Ferrybridge, which he said was free and unincumbered. He said to defendant that he knew his property well, and as it was free he should have no difficulty in obtaining him £100 upon it, and eventually it was agreed that the money should be lent to him, and defendant, as solicitor to the lodge, was instructed to prepare the security, which he did (deed produced), and the £100 was paid to him on the 15th of May, 1886. What induced him to lend him the money was, he thought defendant was an honest man and believed what he said. He also said that he wanted the £100 just to set him at liberty for twelve months, as he had some money coming in from Chancery at that time. The property, he said, was his own *bonâ fide* freehold and no incumbrance on it, and he believed that statement or he should not have lent him the money. Cross-examined by Mr. Kershaw: Defendant said the property was worth from £600 to £700. He knew the property by passing it, and it was well worth £100. He believed all defendant said. He knew Mr. Farr, auctioneer and valuer, Pontefract, who ought to know the value of the property. Defendant had invested other money for the lodge. Defendant said there was no incumbrance on the property without being asked. If it had been known the property was not free the money would not have been lent; It was on defendant's representation that it was advanced. The lodge had not, that he was aware of, lent money on second mortgage. He knew Mr. Alfred Spink; he was formerly in partnership with defendant. Money had been lent to them jointly. A Mr. Thompson had £70 advanced to him, which was, he believed, on a second mortgage, but he was not aware of it at the time the money was advanced. Defendant had paid interest on the £100, and he (witness) had never called upon him for repayment of the amount. Re-examined: The £100 lent was the property of the lodge. Joseph Dawson, fishmonger, Pontefract, stated that he knew the property described in the deed of mortgage of the 15th May, 1886. At that time he had a mortgage on that property for £450, which he lent the defendant on the 25th May, 1882. Cross-examined: I consider the property would if sold by auction realise £650. The defendant asked me to let him have £100 more on the property, which he would have lent him if he had had it to spare at the time. He had known defendant many years, and regarded him as a most respectable man. Defendant's father had been Mayor of Pontefract. James Brown, station-master, Milford Junction, one of the trustees of the Victoria Lodge, said before Mr. Clapham made the advance the defendant met him on the platform at Milford Junction,

and said he had seen Mr. Clapham and wanted to borrow £100 on security of his own house, which he called Aire Villa. He asked him what kind of a house it was, and defendant said it was worth from £750 to £800, and was free from incumbrance, and he should only want the money for about twelve months. Witness believed what he said, and consented to the loan of £100 to defendant. Mr. Kershaw, in cross-examination, asked witness if defendant did not say there was ample security for £100 free from the incumbrance, and to which witness answered "Yes," but which he contradicted on being asked the same question a second time, saying defendant's words were that the property was freehold and unincumbered. The rule of the lodge forbid money being advanced on second mortgages, but they had been misled by defendant's misrepresentation. The rule was then read by Mr. Kershaw, which was to the effect that money might be advanced on mortgage, but there was no mention as to second mortgage. The magistrates' clerk said it was a well-known principle that trustees ought not to lend money on second mortgages, and if they did so it was at their own peril. Mr. Kershaw, in a very able address, submitted that no case of intent to cheat and defraud had been made out against the defendant upon which a jury would convict. The defendant was the owner of a house and premises at Ferrybridge, upon which Dawson had a mortgage for £450, and who would have lent defendant another £100 had he had the cash when asked, as he considered the property would have realised by auction £650, and thereupon the defendant submitted the security to Mr. Clapham, saying the property was worth from £600 to £700, and there could have been no possible reason for his using the words "free from incumbrance" when there was ample security for the amount to be advanced. He submitted that the words, "There was ample security for £100 free from the incumbrances," admitted by Mr. Brown in the first instance, but on reflection subsequently contradicted, were the words used by Mr. Spink in the conversation at Milford Junction Station. If there was no intent to defraud at the time the money was obtained there was no crime, and he considered that the defendant had not been fairly dealt with; he had been dragged into a criminal court upon a charge of a most serious nature, as against a man having the defendant's position, and which if sent to the assizes for trial meant expense and ruination for life to the defendant, without having first called upon him to repay the amount or realised their security. Dawson's security was registered at Wakefield, and the society could have found it and it was not likely that defendant would have stated that the property was free from incumbrance when Dawson's deed was upon the register. He therefore submitted again that there was no case against the defendant to send for trial. The magistrates' clerk here pointed out that the defendant was charged with obtaining money by false pretences with intent to defraud George Clapham and others, which included the defendant, he being according to Clapham's evidence, a co-trustee, and to a certain extent a beneficial owner, and he failed to see how defendant could have been charged with false pretence; if it had been stealing or embezzling he might have been so charged, but the court would like to hear the learned counsel's arguments on that point. Mr. Law submitted that at the time the £100 was advanced the defendant was not a trustee, although it had not been proved in evidence, and asked to recall Mr. James Brown. The clerk said the prosecution had closed their case, and it was not fair to the defendant to allow witnesses to be recalled when they had heard the arguments. Mr. Kershaw then submitted that the defendant could not obtain money by false pretences

from himself, and the fact of his being a trustee such money was vested in him as well as in Clapham and the other trustees. The Bench, after consulting with their clerk, dismissed the case.—In the second charge, as to the £150, Mr. Law said he should offer no evidence, and it was therefore dismissed.

CASE 97.

HARTLEPOOL COUNTY COURT. 1877. *Feb.* 10. TRUSTEES OF GOOD INTENT LODGE OF ODDFELLOWS (WEST HARTLEPOOL) *v.* WATSON.

Friendly Society—Clearance—Transfer of Member from an unregistered Lodge—Claim by Lodge to which Member was transferred for sick and funeral money paid within 12 *months from date of transfer allowed.*

At Hartlepool County Court, February 10th, 1877, before Mr. E. J. Meynell, Judge, the decision in the case of the Trustees of the Good Intent Lodge of Oddfellows, West Hartlepool, *versus* Watson, secretary of the Benevolent Lodge, Wolsingham, was delivered by his Honour. The case was heard a month previous, Mr. R. H. Young, of West Hartlepool, appearing for the plaintiffs, and Mr. Maw, of Bishop Auckland, for the defendant. His Honour gave judgment as follows :—

The plaintiffs are the trustees of the Good Intent Lodge of Oddfellows, a duly registered branch of that society ; the defendant is a secretary of a lodge called the Loyal Benevolent Lodge of Oddfellows, but which in 1872 was not registered. The 46th general rule of the Oddfellows Society provides for the transfer of a member of one lodge to another, but if he falls sick or dies during twelve months from such transfer, the transferring lodge is to be liable for all claims, and the member is to be paid sick money and funeral benefit at the rate allowed by such lodge. A man called Brown, a member of the unregistered lodge, was transferred in August, 1872, to the Good Intent Lodge, the trustees of which were ignorant that the rules of the Loyal Benevolent Lodge were not registered. Brown fell sick and died within the twelve months. The secretary of the Good Intent Lodge, in accordance with rule 46, wrote to the defendant on September 23rd :—

Good Intent Lodge, West Hartlepool, September 23, 1872.

Mr. Cuthbert Watson, secretary, Benevolent Lodge, Wolsingham.

Sir and Brother,—Your member, Brother Robert Brown, whom we accepted by clearance, has declared himself on the funds by surgeon's certificate, which I have enclosed, dated September 5th. Please state what amount we are to pay him per week, or per day, as you are aware that you are held responsible for twelve months, according to general law. Your immediate attention will oblige.—Yours fraternally,

55, Scarborough Street,
West Hartlepool.

H. S. STEEL, Secretary.

He received the following reply :—

Loyal Benevolent Lodge, Wolsingham, October 2nd, 1872.

Sir and Brother, –I write these few lines to inform you of what our lodge allows in sickness, 8s. per week for the first 26 weeks, and 7s. per week for the next 26 weeks. I wanted information before I answered your letter, or else I ought to reply sooner.—Yours fraternally,

CUTHBERT WATSON, Secretary.

The Good Intent Lodge paid on Brown's behalf £17 14s. 8d., and which, according to rule 46, the Loyal Benevolent Lodge, if duly registered, would have been obliged to pay, and to recover this sum the action is brought. Had the Loyal Benevolent Lodge been a registered society, the matter is one which probably would have come under the general arbitration rules, but being an unregistered society it was argued and conceded that these rules would not apply. Mr. Young contended that the trustees could recover from the defendant for money paid to the use of the defendant at his request, relying on the letters. I think that contention is right. The members of an unregistered friendly society are either in the position of partners or as members of a club, and the latter seems a more accurate description of their position. It is not material in this case whether they are partners or not, as by the County Court Act one partner can be sued without joining his co-partners. I think the defendant's letter is a sufficient request to pay the money, and that it is paid to his use. If not recoverable as money paid, it perhaps may be so as money paid and received, and I would amend by adding such a claim if necessary. It appears to me the money is recoverable, and I find for the plaintiffs.

CASE 98.

COURT OF COMMON PLEAS.

WORMWELL *v.* HAILSTONE.

TINDAL, C. J. 1830. *June* 17.

An Officer of a Society or other person sued is not personally liable.

In an action against the clerk of the trustees of a turnpike road, under a statute which permits the trustees to sue and be sued in the name of their clerk, execution cannot issue against the clerk personally.

CASE 99.

QUEEN'S BENCH DIVISION.

ASHBY *v.* COSTIN.

1888. *March* 23 *and June* 12. *Before* CAVE, J. AND GRANTHAM, J.

Administration—Insurance (Life and Accident) Benefit Society—Contract of member with Society—Death of member intestate entitled to allowance—Discretion of committee to pay allowance to other than deceased's administrator—Right of assured's administrator to death allowance.

The defendant's brother was a servant in the employment of the London and North Western Railway

Company, and was a member of an insurance society formed of the workmen of that company, the company making contributions to its funds. The members were entitled to a death allowance on their death happening when on duty. The allowance was proportioned to their weekly contributions. The defendant's brother, who was killed when engaged in his duties, lived with her. He made no will. The defendant applied to the committee of the society to be paid the sum due to her deceased brother, and the committee, under one of their rules, paid it over to her. By the rule in question the committee were empowered to pay such allowance to such person or persons as in their discretion they might think fit, it being always understood that the extent to which the committee should be bound to the payment of death allowance should be, in the case of a married man, to his widow or children, or to his parents, or to any of them, in such proportions as the committee should determine; and in the case of a single man, to his parents, brothers, or sisters, or any of them, in such proportions as aforesaid, unless the deceased members, married or single, should have otherwise bequeathed the money, in which case it should be paid to the person to whom it had been so bequeathed; but should there be no such surviving relatives, nor any such special bequest, then the funeral expenses only to a reasonable amount should be defrayed by the society. But every such case, and all other cases, should be subject to the decision of the committee. The plaintiff, the brother of the deceased, took out letters of administration to his estate, and brought an action as administrator against his sister for the payment over to him of the money paid to her by the society, and the County Court Judge gave judgment for the plaintiff. The defendant appealed.

Held that the appeal ought to be allowed, as the deceased had entered into a valid contract with the society, by the terms of which, in the event of his dying unmarried and intestate, the committee might, in their discretion, pay his death allowance to any relative they might think fit within certain classes, and that as the committee had so paid the allowance to the defendant, their decision was final and binding, and she was entitled to retain the money.

This was an appeal from the decision of the County Court Judge of Hertfordshire, in which he gave judgment for the plaintiff, who, as administrator of his deceased brother, had brought an action to recover the sum of £80, part of the deceased's estate, from the defendant, his sister.

The deceased, Alfred Augustus Ashby, was a servant in the employment of the London and North Western Railway Company, and a member of the insurance society of that company.

Each member of the society was entitled, if injured in the service of the company, to a certain weekly allowance proportioned to the amount of his subscription.

The deceased, who was unmarried and lived with the defendant, was killed in the service of the company, leaving no will ; and the committee of the insurance society paid over to the defendant £80, being the amount of his death allowance.

The committee, under rule 27, to which the deceased was a party, claimed to exercise a discretion when a member died intestate and unmarried, to whom among certain relatives and in what proportions they should pay the death allowance due to the deceased member.

The plaintiff, the brother of the deceased, took out letters of administration of his estate, and brought his action against defendant to recover the said sum of £80, being part of the estate of the deceased.

The learned County Court Judge gave judgment for the plaintiff and defendant appealed.

Mr. Blackwell for the defendant ; Mr. C. E. Jenkins for the plaintiff.

June 12.—The judgment of the court was delivered by

Cave, J.—This is an appeal from the decision of the judge of the County Court at Watford. The action was brought by the plaintiff as administrator of Alfred Augustus Ashby, deceased, to recover from the defendant the sum of £80 paid to her by the London and North Western Railway Insurance Society under the following circumstances :

The deceased was a member of the society under Scale A, and had filled up and signed and transmitted to the secretary of the society the declaration form contained in Appendix I. to the rules. Rule 27 is as follows : [His lordship here read the rule.] As we read this rule, it forms the contract between the member and the society as to the payment of the death allowance, and by it the society binds itself to pay the death allowance to the person to whom the member may have bequeathed the same, and in the absence of any bequest, in the case of a married man to his widow or children, or to his parents, or to any of them in such proportions as the committee shall determine, or in the case of a single man to his parents, brothers, or sisters, or any of them in such proportions as aforesaid. In the absence of any such surviving relatives the society are to pay only the member's funeral expenses. In Ashby's case the death allowance amounted to £80. He had not bequeathed it, and was a single man, and, under the circumstances, the society paid the amount to the defendant, his sister. It cannot be contended that the society have not fulfilled their obligation to the deceased, but it is said that the sum was assets for the payment of the debts of the deceased, and that the defendant, in receiving it, acted as executrix *de son tort* and is liable to the administrator. We cannot agree with that contention.

The money was not the money of the deceased, although it was payable out of a fund to which he and others contributed. It was to be paid according to the bargain made by the deceased with the other members. He had a power to bequeath the whole amount to any one he might select, and we think it is tolerably clear that if he had exercised this power the amount would have been assets for the payment of his debts.

Holmes *v.* Coghill (7 Ves. 498 and 12 Ves. 206, and see 2 Williams on Executors, 7th edit., p. 1686). But he did not, in fact, exercise the power, and by the contract between the society and himself the money was to be paid to certain prescribed relatives in such proportions as the committee of the society should determine. It was contended that the language of the 27th rule was only intended to provide someone who should be able to give the society a good discharge for the money, but we cannot so read it. If there are no surviving relatives of the classes indicated, the society will, after paying the funeral expenses, be entitled to retain the balance of the death allowance, and, in our judgment, if no will is made, they, and not the member, are to determine who among the relatives indicated are to have the benefit of the allowance. It is said that the declaration form in Appendix I. supports the contention of the plaintiff as showing an intention to secure the benefits of the society to the members' representatives in the case of his death. To us, however, it seems clear that these words are used generally to cover the executor or administrator, or the legatee in the case of a bequest. It must be remembered that the death allowance is not the property of the member in the sense of its belonging to him absolutely in his lifetime, he has no right to it but such as the rules give him. If he chooses to bequeath it by his will, it will, as we have already said, be assets ; but if he does not choose to exercise this power, the committee and not the member will determine which of his relatives will get the allowance, and in what proportions, and unless he leaves surviving relatives within certain degrees, the balance after the payment of his funeral expenses, will remain the property of the society. For these reasons we cannot agree with the learned judge that this sum was an asset for the payment of the debts of the deceased member, and consequently the judgment for the plaintiff must be set aside, and judgment be entered for the defendant, with costs here and below.

Appeal allowed.

CASE 100.

CHORLEY COUNTY COURT.
Before JUDGE HULTON.

BIBBY *v.* SECRETARY OF IMPERIAL LODGE OF DRUIDS.

Friendly Society — Judgment against Secretary as representing Society—Order not complied with—Judgment Summons—Application for Committal.

Held that the judgment could not be enforced against the secretary personally.

Recently, a case of peculiar interest to officials connected with friendly societies came before Mr. Hulton, judge of the Chorley County Court. Mr. Spence appeared on behalf of Mr. Bibby, who, in the month of June last, obtained a verdict against the secretary of the Imperial Lodge of Druids, Eccleston, for the payment of £28 8s. due to him on account of sick pay, and applied that the secretary, Mr. Lancaster, should be committed on a judgment summons. Mr. Nash, barrister, put in objections to the procedure, and while admitting that the secretary of the lodge was rightly sued, contended that when the judgment was

obtained it was absurd to suppose that it could be enforced against the defendant. He pointed out that it was analogous to the case of an official of a wealthy bank being sued and a verdict against him recorded, but it could not be supposed that his household effects could in consequence be distrained upon under the Debtors Act. Mr. Spence contended that the 3rd sub-section of the 21st section of the Act of 1871 was incorporated by the legislature to prevent swindling societies getting rid of their liabilities when judgment was given against them. His Honour, in declining to grant an order of commitment, said the Act gave power to sue a secretary of a society, but it could not be supposed that it contemplated the enforcement of judgment against him personally.

CASE 101.

HIGH COURT OF JUSTICE, CHANCERY DIVISION. 1882, *Feb.* 10. KAY, J.

AVERY *v.* ANDREWS AND OTHERS.

Friendly Society—Illegal Division of Funds—Injunction granted against certain Trustees of Society, restraining them from dividing £2,000, *part of the Society's funds, amongst its members; these trustees retired and others were appointed, and the Society then passed fresh resolutions for dividing the* £2,000, *which division the new trustees carried out.*

Held that the new trustees as well as the old, who were cognisant of it, were guilty of contempt of court. Committal to prison.

Justice Kay: Do you move, Mr. Hardy?

Mr. Cozens Hardy: I have to move, my lord, to commit to prison six trustees of the Loyal Brunswick Lodge of the Manchester Unity of Oddfellows Friendly Society, for disobeying an order of this court restraining them from distributing £2,000 of the funds of the society amongst the members. A resolution had been passed by this particular branch of the Unity for making this division of a sum of £2,000, part of the funds of the society, without the requisite sanction having been obtained; and this action of Avery *v.* Andrews was commenced for the purpose of restraining that improper division. On the 12th October last an interim order (*ex parte*) was obtained from the vacation judge restraining the defendants for a week from dividing or distributing that sum. That interim order was personally served upon the three defendants. On the 19th October, when the notice of motion which was served by me for that date came on (the defendants being, no doubt, well advised in the matter), it is in evidence that the defendants admitted that they had no defence to the order, and the order was made perpetual, counsel on both sides consenting.

Having read the formal order made by the court, perpetually restraining the defendants from distributing the £2,000 of the funds of the Loyal Brunswick Lodge of Oddfellows, or of otherwise dealing therewith in contravention of the rules of the society.

Mr. Cozens Hardy continued that, at the defendants' suggestion, there was this addition to the order, "And the defendants are to be at liberty to apply in Chambers, if so advised, in the event of the secession of the lodge mentioned in the writ from the plaintiff's society." That is disposed of at once, for no such secession has taken place, and certainly there has been no application in Chambers with reference to such secession. On that very 19th October there was a meeting of the lodge, at which all three of the defendants were present; and at that meeting a letter was read from their solicitor to the lodge, in their presence, stating that the proposed division was unlawful, and advising them to consent to a perpetual injunction. This case was a case of local interest, and was reported in the newspapers of the locality. Then this is what happens. On the 2nd of November these three defendants retire. I may mention that this is not the first case of the trustees retiring, because the original proposal to divide this £2,000 was made in September, but the then trustees refused to act upon it, and they were expelled, and these three new trustees, the defendants, were put in their place. The plaintiff, the secretary, who also declined to be a party to it, was likewise expelled. When these trustees were expelled, Hemming, Heath, and Bartlett were appointed in their place. On the 11th of January, 1882, a resolution was passed to appropriate and divide the £2,000 funds of the society.

Mr. Ince, Q.C. . They borrowed £2,000 from the bank.

Mr. Cozens Hardy: This resolution was carried out. The three trustees went to the society's bankers, and asked for £2,000 on loan of the securities which the bank had. The bank manager, who, of course, knew what had taken place, said he could not be a party to it; he had taken legal advice, and he declined. Thereupon the trustees immediately drew out the balance to their credit, and took the deeds from that bank and carried them to a new bank—the Gloucestershire Banking Company's branch—the manager of which, I presume, is ignorant of what has taken place—and they obtained from that bank £2,000. On that same evening, my lord, there is another meeting of the lodge, and the £2,000 is divided between the members, Mogg, one of the original trustees, and a defendant in the action, actually taking part and assisting the trustees in the distribution of this £2,000, and the others being present and actually receiving their share of the plunder. One received £14 13s., another £13 19s. and another £7 10s. 6d. My lord, they now say, "We have since restored these sums." But, my lord, the fact remains that, in spite of the order of this court (an order originally made upon the evidence *ex parte*, and then by consent made perpetual), this £2,000 has actually been divided amongst the members of the society. It has been divided, with the actual cognizance and assistance of Mogg, one of the trustees, and the other parties received their quota; and the new trustees actually made the division with the full knowledge of the actual order of the court which had been made.

Justice Kay: Was the society in any way, under special provisions or otherwise, a party to it?

Mr. C. Hardy: No, the society is not incorporated. The trustees are the parties to sue and be sued.

Justice Kay: Then you have only got an order against three individuals?

Mr. C. Hardy: I have an order against the three individuals, and I move against them now, for the actual breach of the injunction.

Justice Kay: But you have got the money back. That is really what they claim.

Mr. C. Hardy: We have, my lord, a portion of it; what they received.

Justice Kay: They were not present at the division?

Mr. C. Hardy: Mogg was the person who assisted the trustees in the actual division of the funds on the 12th.

Justice Kay: Not the man who did it, but the man who was present, lending his countenance.

Mr. C. Hardy: That I submit is enough to entitle me to apply for them to be committed for breach of the injunction. If the order is simply to restrain the defendant from doing an act, and he stands by and assists—

Justice Kay: And claps his hands whilst it is being done.

Mr. C. Hardy: More than that, my lord, he actually handled the cash.

Justice Kay: He has restored that.

Mr. C. Hardy: My lord, he has only restored what he received; but he was present, then and there, and assisted the trustees to divide the whole £2,000.

Justice Kay: I do not know what you mean by assisting. Was it by applause, or vote, or what?

Mr. C. Hardy: This is the evidence on that point, which is not at all denied.

Justice Kay: It was not money which comes through his hands.

Mr. C. Hardy: My lord, I think it was. What he says is this—"I am informed that Mogg was actually engaged in helping the officials in the division."

Justice Kay: I no more know what that means than I do by your saying he assisted. What does it mean? He did not receive the money.

Mr. C. Hardy: He was there actually assisting the trustees.

Justice Kay: I want to know what you mean by assisting; because in one view of the matter I am assisting you, though I dare say you don't think so. (Laughter.)

Mr. C. Hardy: We are in this position because the parties who have divided the money do not want to give information.

Justice Kay: I cannot send a man to prison because a person does not like to give evidence.

Mr. C. Hardy: There was application made last week for leave to serve a summons upon the secretary, *ad testificandum et duces tecum.* I propose to ask him some questions on this point, my lord, with reference to the new trial.

Justice Kay: I do not remember any such new trial.

Mr. Healey: There is greater difficulty in obtaining evidence, because the plaintiff in this action has been expelled from his lodge, in consequence of the action he has taken. I asked for leave to serve short notice of motion in respect of the new trustees which your lordship granted, and I asked to issue a summons *ad testificandum et duces tecum.*

Justice Kay: Did you ask to examine him in court on the motion?

Mr. Healey: Nothing was said about it.

Justice Kay: I do not remember having ordered an examination in court.

Mr. Healey: No, my lord, you simply gave me leave to issue this summons.

Justice Kay: That means taking him before the Examiner. The court never allows examination and cross-examination in court on motion without special order. I certainly made no such order as that that I remember.

Mr. Healey: This is the order your lordship made, and it agrees with the Registrar's book. "Liberty to serve present trustees of society with short notice of motion, and also liberty to serve secretary of society with subpœna *ad testificandum et duces tecum.*"

Justice Kay: Is there stated in the notice there was to be examination and cross-examination?

Mr. Ince: No.

Justice Kay: Nor did I hear anything of that.

Mr. C. Hardy: The subpœna was to attend here and give evidence here. I want to examine the books. I want the minute books. The case against the original trustees is clear.

Justice Kay: As far as they received money themselves, it appears to me they were actually infringing the injunction. But beyond that, I do not know what you mean by assisting.

Mr. C. Hardy: He has made an affidavit, and he does not in the least deny that he was here assisting the officials of the society to divide the £2,000. I submit to your lordship that that is such a taking part in committing a breach of the injunction as renders the party himself liable for that breach. It is just within the decision in the case of St. John's College *v.* Carter, 4 Mylne and Craig, where, an injunction having been granted to restrain the defendant from cutting wood and timber, the order to commit having been granted by the Vice Chancellor, it was objected on appeal that the defendant had not been guilty of contempt, because he did not actually cut the timber; he was simply present while others cut it. The Lord Chancellor said, if the defendant was present

at the cutting, when the breach of the injunction was committed, he must be considered as actually committing a breach of it himself. The facts leave no doubt that the defendant Mogg was present aiding and abetting in an act from which he was prohibited.

Justice Kay: What does he say?

Mr. C. Hardy: He has put in an affidavit, but it does not at all deal with that part. He admits he was present and received money; but he simply says, at the end, "I have returned it." I submit, therefore, as against Mogg, I have ground for the order I ask, from the mere fact that he received money, that he aided and abetted the society and their trustees in doing that which he was restrained from doing by order of the court. The case set up by the new trustees is rather this—they say, "we were not actually served with any copy of the order making the injunction perpetual."

Justice Kay: That does not matter, if they knew of it.

Mr. C. Hardy: They consented by counsel to the order being made perpetual. Then the motion as against the other trustees is rather different in form. Of course they have not committed a direct breach of the injunction.

Justice Kay: I thought you said one, at least, had received money.

Mr. C. Hardy: But there is no injunction restraining the new trustees. I proceed against them in a different manner. They were present aiding and abetting in the breach of the injunction, well knowing that such division and such dealing with such division were in contravention of the order of the court.

Justice Kay: The court did not make any order that the £2,000 should not be divided.

Mr. C. Hardy: That the defendants should not divide it; and I submit we are governed by the case of Lord Wellesley *v.* Earl of Mornington, 11 Beavan, 180, where an injunction was granted to restrain Lord Mornington from doing an act. Then a motion was made to commit an agent for breach of the injunction; but it was contended that he had not been restrained by the injunction. The judgment of the Master of the Rolls is this:—

"You don't ask to commit him for contempt, but for breach of an injunction by which he is not enjoined. I think the objection fatal to this form of motion; but I by no means think, because Batley is not enjoined in his character of servant and agent, he cannot be punished for knowingly aiding and assisting Lord Mornington in doing that which this court has expressly prohibited. I must refuse this motion, but without costs."

Then, on the next page, is the motion which was made in accordance with his lordship's suggestion. The marginal note (11 Beavan) is this:—"An injunction was granted against A, restraining him (but not expressing his agents and servants) from cutting timber. B, who was A's agent, with the knowledge of the injunction, cut the timber. Held that B might be committed for contempt, though not for the breach of the injunction." That, in fact, when the court has restrained trustees

from making this particular division, and these trustees retire, and others come in their place, and immediately proceed to divide the funds, it is, as Lord Longdale put it, a contempt of court, though it may not be a breach of the injunction.

Justice Kay: What strikes me at present is this: I do not know whether this division was wrong or not. The court has not decided that question.

Mr. C. Hardy: There is an order of the court against the division of the money.

Justice Kay: Against A, B, and C; but the others rather consented not to divide.

Mr. C. Hardy: It is an order made at the first application *ex parte*.

Justice Kay: Then it was by consent made perpetual.

Mr. C. Hardy: There was a means of getting rid of that order under the power which was reserved at the end of the order itself. No such application has been made, and I submit, my lord, it is a case in which trustees who have been restrained retire, and other trustees are put in their place, and they proceed to do the very thing which the court had restrained by injunction. My lord, they have filed affidavits, but they do not suggest that this division was a proper thing to do. They say we have restored that portion which we received. They do not say they did not know of this order; but they say they had not actually seen a copy of the order; but I submit that is not sufficient. If the court has by perpetual order sought to restrain the doing of a certain act, it is not competent for other people to do it.

Justice Kay: What is the first case you cited?

Mr. C. Hardy: The case of St. John's College *v.* Carter, 4 Mylne and Craig, 497. Thus there are two cases which draw a distinction between a motion to commit for breach of injunction and for doing something which was prohibited to be done by someone else. In this case the defendant Pratt moved before the Lord Chancellor:—"That the Vice-Chancellor's order might be discharged, on the ground that, although he was present when the breach of the injunction was committed, he did not actually commit a breach of it himself." Lord Chancellor said:—"If it were proved the defendant was present aiding and abetting when a breach of the injunction was committed, he must be considered as actually guilty of a breach of it himself." His lordship then proceeded to examine at length the statements made in the various affidavits before him and said, "The facts deposed to leave no room for doubt whatever that the defendant was present aiding and abetting in the commission of an act which he had been prohibited by injunction from doing." His lordship said he must abandon a principle applicable both to criminal and civil law, if he did not visit the party practising such conduct with all the consequences of the injunction, and that he should not vindicate the jurisdiction of this court if he did not refuse the motion.

My lord (continued Mr. Hardy), this is a matter which concerns, and concerns greatly, the solvency of these branches. If this sort of thing is to be allowed to go on—if you get an injunction against one set of trustees, and they are to retire, and another set of trustees are to come

in and do that which this court has forbidden, one does not see how the members' funds are to be kept safe. I do not know what other course the central body (for whom I appear) could take than to endeavour to make these persons liable for acts done in defiance of this court, whereby £2,000 has been paid away, and paid away in small sums to persons in such a position of life that there is little or no chance of succeeding in obtaining the money back. I submit, my lord, we are entitled to committal as against the original trustees, because they were themselves restrained by the injunction, and the act which they did was a direct breach of the injunction, and of course the repayment of the small sums they received does not purge their contempt. As to the others, I submit, with a full knowledge of the injunction, they have been parties to the act which it forbid. I must ask your lordship to exercise the strict power of the law in order to get this money back.

Mr. Ince, Q.C.: I appear, my lord, for the original trustees. I need not say that the maintenance of the orders of this court is a matter of the highest importance, apart from the dignity of the court, which is a matter not unworthy of consideration. The necessity of enforcing obedience to its orders is paramount, or its jurisdiction would simply become useless. But whilst the maintenance of this power is so important, it is of so grave a nature that the court has always carefully fenced it round, and refused to act upon it except in the clearest possible cases. I venture to think that there is no evidence that the knowledge of the making of this order is brought to the knowledge of the persons for whom I appear.

Justice Kay: Do they deny it?

Mr. Ince: All the other side say is this: It is admitted they have not been served with a copy of the order; it is admitted they were not in court, and did not get out of court not to hear it. All they say is—it was published in the local paper.

Justice Kay: One must be very blind not to see through this. The removal of the trustees against whom the injunction was granted, and the substitution of other trustees, and then the doing of the act by the other trustees, has an apparent purpose.

Mr. Ince: I shall dispose of that, I think, satisfactorily, by my affidavits. With regard to two of the gentlemen for whom I appear, they were not present when the resolution was passed. Certainly one says, if not two, that they were not aware any such resolution was to be proposed. One never went to the meeting at all, and one was fetched away suddenly, by reason of the serious and sudden illness of his wife; and the third, Mr. Mogg, undoubtedly remained throughout the meeting. But what the plaintiffs say is this: that the order of this court was published—that there was a report published of what took place in town in the local papers, and they suggest we must have seen it. In answer to that, the two gentlemen who were present at the meeting deny any recollection of ever seeing the paper, or anything in it. Let me remind your lordship, so careful has the court been, that it provides in its general orders, you shall not only serve the order, but you must put this endorsement at the side if he does not obey it.

Justice Kay: It has been decided notice by telegraph is sufficient.

Mr. Ince: If they had brought it home to the defendants, or taken ordinary care and pains to let these gentlemen know.

Justice Kay: That is not necessary you know, Mr. Ince, if they knew

Mr. Ince: That is just what they do not prove.

Justice Kay: Do they deny it?

Mr. Ince: I think your lordship will, at all events.

Justice Kay: I must sit as a jury on the matter.

Mr. Ince: But your lordship has had experience of another branch of justice of late; and you would not advise my clients to do anything in the way of admitting this, in painful and somewhat criminal proceedings.

Justice Kay: This is not a criminal proceeding at all. It is a proceeding to enforce obedience to an order of this court.

Mr. Ince: Without detaining you further, I will take you to the evidence itself. Amongst this you will see what I say with reference to two of the gentlemen for whom I appear, and I think I may say for the third there certainly was no intention whatever to commit a contempt, either directly, or by doing anything inconsistent with any order of the court, even supposing they had a suspicion, which is the outside you could put it.

Justice Kay: All this would be consistent with this, Mr. Ince: that they might be aware of and have read the order upon A, B, and C, not to do a certain thing, and that they believed if they could get it done by E, F, and G, it would be outside the letter of the order.

Mr. Ince: I completely negative that, my lord.

Justice Kay: Let me hear your proofs of the facts.

Mr. Ince: Mr. Andrews says—

Mr. C. Hardy: Perhaps I had better read my affidavits.

Mr. Ince: No; I think you fairly stated them.

Mr. Ince then proceeded to read the affidavits. Mr. Andrews said amongst other things, that, at the meeting of the Loyal Brunswick Lodge, M.U., on the 2nd November, 1881, he and his co-trustees, Lely and Mogg, tendered their resignation. It was also true that, on the 11th of January, he attended another meeting, but, in consequence of the sudden illness of his wife, he was called away. At the time he left the meeting no such resolution as that referred to in the third paragraph, or any resolution with reference to the £2,000 had been proposed or brought forward, and he was not aware any such resolution was intended to be submitted to the meeting. He did not return to the meeting, and could only speak as to what occurred thereat from information given to him by those present. He had no recollection of having seen the report alleged to have appeared in the *Redditch Indicator*. He was positive that no copy of the order of the court, making the interim order of the court perpetual, was ever served upon him, and he was not and had not been acquainted with the contents of the order. The reason why he resigned as a trustee on the 2nd November, was because he did not wish to be mixed up in litigation. He did not resign in order that trustees might be appointed who would avoid the order of the court, and he

denied it was arranged that he and his co-trustees should resign for this purpose. Then, in paragraph 2, he admitted that he was present at the meeting on the 12th, and received his share of the £2,000, amounting to £14 13s. Then he said, "Throughout the transaction I had no intention whatever of committing any contempt of court, and I have repaid the said £14 13s. so received by me as aforesaid."

I am sure your lordship will see (observed Mr. Ince) that there was no sinister object in retiring; that this party was no party to the resolution to divide the £2,000, and knew nothing of it till the meeting was over. The only way in which he can be said to have infringed upon it is receiving this £14 13s., and the moment his attention is called to the fact that this might be construed as joining in the division of the £2,000, he immediately returned it.

Mr. Ince then read the affidavit of Affifi Lely. He was not present at the meeting of the lodge on the 11th January, and was not aware the resolutions mentioned, or any resolution, was to be proposed or brought forward.

This man (interjected Mr. Ince) really had nothing to do with it, was not present at the meeting of the 7th September, was not aware the trustees refused to act upon the resolution, until he was shortly afterwards informed by a member.

Mr. Ince read further extracts from Lely's affidavit, where he said that no copy of the order making the interim injunction perpetual had been served upon him, nor was he cognisant of the order. His reason for resigning as one of the trustees was his annoyance at being made a defendant in this action. It was not that trustees might be appointed who would be willing to avoid the injunction, and no arrangement was made between him and his co-trustees, or by them, or any person or persons, that they should resign for this purpose. The present trustees were appointed at the same meeting in order that they might sign cheques, and that the financial business of the lodge might be conducted. Finally, he said he had no intention of infringing the injunction, and had repaid his share of the money which he received.

Mr. Ince likewise read extracts from the affidavit of Mr. Mogg. Mr. Mogg said he had no recollection of, and believed he never saw, any report of the proceedings in the *Redditch Indicator*; and he was positive that no copy of the order of the court making the interim injunction perpetual had been served on him, and he had not been and was not cognisant of its contents. He also made the same statement as the others, as to there being no collusion about their resigning, and he also said that he had returned the money he received.

Mr. Ince added; Now I think these affidavits carry on the face of them evidence of their intrinsic truth. One of the defendants, I see, is a beerhouse keeper, another a machine maker, and the other is a warehouseman—all people in humble life, and you can very well conceive that they did not suppose they were doing anything wrong.

Justice Kay: Are they able to assure the court that the money will be repaid?

Mr. Ince: Well, my lord, I do not think you will ask this from the two who really had nothing to do with it — Lely and Andrews. Andrews had left long before the motion was brought forward. Lely was never there at all, and knew nothing about it.

Justice Kay: They all, I think, have committed a direct contempt.

Mr. Ince: To the extent of receiving a small sum. It was a very small sum, and I admit there was a technical breach; but the moment this is pointed out to them, they make that good, as far as in their power lies, and I hope the court will not put them under terms, which to persons in their humble position of life is most important. They cannot refund the £2,000, or make the other persons refund it. I rather press your lordship on that with regard to the two that took no part in it whatever. They are not cross-examined, nor is there any suggestion that a word they state is untrue. As regards them, it is perfectly true that they have done nothing, and their motive for retiring is one that we can very well understand, having regard to their position. With regard to Mr. Mogg, he is said to have been present at the meeting on the 11th January, and assisted in the distribution of the funds; but, like your lordship, I have great difficulty in understanding what is meant by that. It is given in the barest possible way that he helped to distribute the money.

Justice Kay: He passes that over in his affidavit with entire silence.

Mr. Ince: Yes, my lord, he does; but I hope your lordship will give him the credit that is due for truthful speaking. (Laughter.)

Justice Kay: Truthful silence is sometimes kept. (More laughter.)

Mr. Ince: I do not wish to conceal from the court what he has done. I hope your lordship will allow me to offer their humble submission to your lordship, and the expression of their regret for having, for a moment, succumbed to the temptation of £15 or £20, which to men in their rank of life may be a heavy temptation. As regards Mr. Mogg, I hope your lordship will be satisfied, and, although I cannot ask to have the expenses these men have been put to refunded, I hope that your lordship will leave the matter there.

Justice Kay: Mr. Cozens Hardy, I should like to have a copy of your affidavits.

Mr. Ince: They have said Mr. Mogg assisted, and he leaves it there. I tender the same humble apology to the court on behalf of him. If your lordsbip goes so far (as he has gone farther than the others) as to order him to pay some portion of the costs, I trust that is the utmost penalty which you will inflict. It sounds like a technical defence, but bear in mind the position in which these men are placed. It will not go hardly with them, if I suggest that there is this technical defence open to them—that this £2,000 which was divided was not really the £2,000 to which the injunction applied. It was the £2,000 named on the back of the writ—distinctly and clearly naming the very sum then belonging, and they had in the hands of the society.

Justice Kay: According to that, the three gentlemen against whom the order was made, might have paid the £2,000 in other hands to another bank and obtained another £2,000 from another bank.

Mr. Ince: No, that would have been a subterfuge. (Laughter.) I hope your lordship does not place us in that position. (More laughter.) Beside, the society, as my friend reminds me, has no power to borrow. It is rather a technical defence, but in a case of this kind one may venture to put it forward in the hope that it will do no harm. (Loud laughter.) I hope the court will visit these men, who are not lawyers, with the smallest amount of punishment to which it can see its way.

Mr. Methold argued that the money distributed was borrowed from the bank, and was not the £2,000 named in the order.

Justice Kay: I have nothing to do with that; I have simply to consider whether there has been a breach of this injunction.

Mr. Methold said the court restrained the trustees from expending £2,000 of the society's money. If the trustees, who were his clients, had received the money from the bank without the authority of the society, the money distributed had been £2,000 of the bank money, and not the money of the society at all. Therefore, he apprehended, if this was the fact, as the case for the plaintiff showed, there had been no breach of any injunction even by the parties who had actually distributed the money, much less by the parties who were not aware any money was to be divided, and had no hand in it except receiving small sums of money, which they repaid as soon as possible. Under these circumstances, he asked his lordship not to commit any of the defendants.

Mr. Romer, Q.C.: I appear for the new trustees.

Justice Kay: The new trustees seem to me in a very serious position.

Mr. Romer: Of course your lordship bears in mind they are not defendants to this action.

Justice Kay: You will find the arm of the court is long enough to reach them, if they have committed a breach of the injunction.

Mr. Romer: If they have committed a breach of the injunction, the injunction simply meant to restrain the three defendants from distributing the money and no further.

Justice Kay: I should like a copy of the order.

Mr. Romer: You will find it, I think, in the way I have mentioned: an order simply restraining the three defendants from distributing money.

The Judge: Be perpetually restrained from dividing amongst the members of the Loyal Brunswick Lodge, 1,522, of the Studley District of the Independent Order of Oddfellows, Manchester Unity, Friendly Society, the £2,000 in the endorsement on the writ in this action mentioned.

Mr. Romer: It is strictly against the three defendants.

Justice Kay: It is not any particular £2,000, but not to divide £2,000 amongst the members of the lodge.

Mr. Romer: We are here before your lordship on the question of contempt of the order of the court, and it is an order restraining three defendants from doing a certain act. Now motions to commit are *strictissimi juris*, and I submit to your lordship that there is no case where the injunction has been extended beyond the persons mentioned in the order, unless it be that parties outside the very terms of the order have been doing the very acts restrained, on behalf of, or as the agents of, the persons against whom the injunction went. For example, Lord Wellesley against Lord Mornington was a case where it appeared the agent of Lord Mornington was doing the work for Lord Mornington; and, as a matter of fact, the agent was cutting the timber for the person restrained. So it was Lord Mornington doing the act by his agent, and the agent made himself Lord Mornington, knowing thoroughly and conclusively the terms of the injunction. The only other case I find raising the point is the case Lewis *v.* Morgan. This, again, was a case where a solicitor was committed for contempt of an injunction. Morgan was restrained by injunction from receiving certain rents, and a solicitor, with full knowledge of the order, received them for Morgan. Here, again, it was the case of a person committing an act for the person enjoined. I know of no case where A being restrained from doing a certain act, B cannot do it, not being A's agent, and not doing it for A. B is not bound to inquire——

Justice Kay: Mr. Romer, will that help you? Because here the persons enjoined were enjoined in the character of trustees of the society.

Mr. Romer: Are they on the face of the order named as trustees?

Justice Kay: I do not think that is material. What is the character in which they are enjoined? It was the reading of the affidavits which stated that they were trustees.

Mr. Romer: I am going to call attention to the fact that my clients, the new trustees, had no such notice of the order as will warrant my friend in asking for their committal, whatever ground he may have for asking for an adjournment.

Justice Kay: Let us put it within limits we are every day dealing with. Supposing the trustees of a marriage settlement were enjoined from dealing with the funds, and next day they retired, and new trustees were appointed. Do you mean to say the new trustees could do it, and would not be guilty of contempt of court?

Mr. Romer: They could be restrained and compelled to pay back the money and costs.

Justice Kay: Would not they be guilty of contempt, if, knowing there was an injunction granted against the persons into whose shoes they stepped, they nevertheless did the act?

Mr. Romer: I would venture to say that is not a very easy question to answer, because it comes half way on the border line. I am prepared to admit, and do admit, according to the authorities, if A is restrained, although agents are not mentioned, if any servant does do the act for A for which he is enjoined, that certain agent must be committed. Now a nice question might arise whether an injunction which, in the form of it, restrained persons in the capacity of trustees from doing certain

things with respect to the trust estate, and new trustees allowed themselves to be appointed for the purpose of stepping in and doing the very act which they were prohibited.

Justice Kay: It is against acting as trustees.

Mr. Romer: My clients have never seen this order, and I had perhaps better call your lordship's attention to that.

Mr. Romer then read some extracts from affidavits of his clients, Thomas Hemming, Joseph Heath, and William Unett. They were to the effect that, on or about the 2nd November, they were called upon by the secretary of the lodge, who told them the then trustees were about to resign their office, and it was necessary new trustees should be at once appointed in order that new cheques might be duly signed, and the financial business properly carried on. The secretary did not tell them, or any of them, that the then trustees of the lodge were going to resign because they had been restrained by that honourable court from dividing £2,000. They were not to be appointed trustees in order that this division might take place. They had not any of them had in their possession or seen any order of that honourable court granting an interim injunction in this case, or any order making this interim order perpetual, or copies of such orders respectively, and they were not, nor had they been, aware of any such order or orders.

Justice Kay: This is swearing entirely by the card. This is nearly in the very words in which the trustees swear; but not one of them says—nobody, in fact, says—that he was not aware that the injunction was granted.

Mr. Romer: The persons against whom the injunction went cannot be allowed to say that.

Justice Kay: They do so, in the same words. It is so stated in every affidavit.

Mr. Romer: I would ask that my clients may not be prejudiced.

Justice Kay: I see that they appear by the same solicitor.

Mr. Romer: Still, on the motion to commit, I ask your lordship not to allow that to weigh with your lordship. We have to prove most strongly as against certain persons who were not parties to the order. They must prove these facts—absolute knowledge of the precise order of the court, and, in this case, of the reason why it was made. That is to say, it was made as against the original trustees, in their original capacity as trustees; and that the new trustees deliberately chose to be elected new trustees with the view of carrying out, and, in fact, were elected to carry out, the very thing restrained by a prior order. The affidavit goes on to say, "We have not, or have either of us, had any conversation with the trustees with respect to that sum, or with any person whatsoever officially connected with the lodge, and we did not know the resolution as to the division of the money was to be proposed to the members of the lodge. The first intimation we, or either of us, heard of the matter was, the actual proposal to divide the money, made at the meeting on the 11th January." Then they say, "We have not, nor has either of us, had any intention to commit any contempt of the order of this honourable court." I ask your lordship to construe this

affidavit into this, that they were certainly not so made acquainted with what had been done by the court—with the order of the court—as to render them guilty of contempt.

Justice Kay: These are three gentlemen who, on the bank refusing to advance the money, thereupon went to another bank and got the money from them, after the other bank had refused to advance them the money because of the injunction. Is not that so?

Mr. Romer: I submit the bank refused to lend them the money, not on account of the injunction, but because there was no power to borrow.

Mr. Method: The society has no power to borrow.

Justice Kay: Is that so? It was told to me that the bank refused to give them the money because of the injunction.

Mr. Cozens Hardy: The word "injunction" is not mentioned in paragraph two of the affidavit.

Mr. Romer: I think it is fair, from the paragraph, to say it was because they had no borrowing powers.

Justice Kay: Took a legal opinion on the matter?

Mr. Romer: I say I think the reason was, there was no borrowing power.

Justice Kay: It may be; I will give them the benefit of any doubt.

Mr. Romer: This being so, these three new trustees, I venture to say, had not that knowledge—have not been parties to the action done with knowledge of what the court had done in this case, as to render them liable to be committed for contempt of court for what they have done. Whether they may not be restrained, or another order can be made upon them upon another motion, I cannot say. All I ask is that your lordship, sitting there, will show—as judges always do in these matters—leniency towards these persons in this position—placed in such a serious position; and give me leave to say, on this evidence, that it is not clear my clients have committed any contempt.

Justice Kay: Were your clients present on the 19th October, when the solicitor's letter was read?

Mr. Cozens Hardy: The minute-book of the lodge is here.

Justice Kay: Let me see it. Who are your clients, Mr. Romer?

Mr. Romer: Thomas Hemming, Joseph Heath, and William Unett.

Justice Kay: It does not appear from the minute-book one way or the other. Are there any resolutions?

Mr. Cozens Hardy: I have asked that. In the next book there are a good many resolutions bearing on the matter.

Mr. Romer: I ask your lordship, on the evidence, not to come to the conclusion that these three trustees were aware, at any rate, of what had been done by this court as to render it a contempt on their part to do

what they did. Before persons can be committed for contempt of this court this must be clear—that they had a perfect knowledge of what was done, and what the order extended to; and that what they have done has been done in deliberate violation of the order, and in disregard of the court. I ask you to come to the conclusion that my clients have not done that; and certainly they have not had the slightest notion that, in doing what they did, they rendered themselves liable to be brought before your lordship as having committed a contempt of court. They also, as your lordship knows, have repaid to the society the moneys they have themselves received. I see there is the affidavit of Mr. Parry, which I ought to call your attention to, sworn on the 8th February. He says that he gave them no information as to why or how it came that the former trustees resigned, and that the new trustees had not the slightest knowledge or notice, when they were appointed, as to what was to be done afterwards—in this respect corroborating their statement. So this case cannot be established against them. It is not a case where, knowing other trustees had been enjoined, they allowed themselves to be placed in the position of the other trustees for the purpose of doing that which had been restrained by the order of the court. I ask your lordship to come, not to the conclusion that the motion is right against my clients; and if so, upon their apology, I ask your lordship to make no order for their committal, but only such order as to your lordship, under the circumstances, shall seem just.

Mr. Cozens Hardy: I have only a few words to add. These new trustees do not venture to say anywhere in their affidavits that they did not know this injunction was granted. They say, "We have not seen the order. Mr. Parry did not tell us why the new trustees were to be appointed. Mr. Parry did not tell us they had resigned because they were restrained from dividing these funds." From first to last they do not venture to tell your lordship that they had no knowledge of the matter. In fact, these entries which your lordship has before you puts the matter beyond all doubt. There is a resolution that Mr. Avery be expelled unless he paid £76, the cost of this action. You will find another resolution to defend this action, cost what it may, out of the funds of the society. The facts show that this is a deliberate attempt on the part of the trustees of this society to divide this £2,000 in small sums amongst themselves in defiance of, and in disobedience to, the order of this court. This being so, I hope the court will hold these parties—both the original trustees and the present trustees—responsible; the original ones because they have done what they were restrained from doing, and the new trustees for having actively concurred and done that which they knew the court had prohibited.

Justice Kay: I regret extremely to have to decide this case, but the facts seem to me to be these: On the 29th of September in last year a writ was issued by George Avery, purporting to be on behalf of himself and all other the members (except the defendants) of the Independent Order of Oddfellows, Manchester Unity, Friendly Society, and the society itself, as plaintiffs, against Thomas Andrews, Affifi Lely, and John Bartlet Mogg. The writ is endorsed for injunction in these words: "To restrain the defendants, who are sued as trustees of the Loyal Brunswick Lodge, 1,522, Studley District, of the Independent Order of Oddfellows, Manchester Unity, Friendly Society, from acting on the resolution of the lodge dated the 7th September last, to divide a sum of £2,000 amongst the members of the lodge—not any

particular £2,000, but to divide £2,000 of the property of the society amongst the members of the lodge; and from dividing amongst the members of the lodge, or of otherwise dealing with in contravention of the rules of the lodge, a sum of £2,000, or other assets of the lodge." It seems the next part of the injunction was obtained from the vacation judge, on the 12th day of October last, restraining the division for a week, and giving leave to serve notice of motion. This motion came on on the 19th October, and the order made was: "On motion for injunction this day made, upon hearing counsel for defendant, and upon reading the order of the 12th October, 1881, and certain affidavits, and counsel on both sides consenting, that the said motion should be treated as a motion for judgment, this court doth, by consent of all parties, order that the defendants, Thomas Andrews, Affifi Lely, and John Bartlet Mogg, be perpetually restrained from dividing amongst the members of the Loyal Brunswick Lodge of the Independent Order of Oddfellows, Manchester Unity, Friendly Society, the £2,000 in the endorsement on the writ in this action mentioned, or otherwise dealing therewith in contravention of the rules of the lodge." Then it was ordered that it should be referred to the taxing master to tax the costs of the plaintiff, and these defendants were ordered to pay these costs on being so taxed. Now, what took place was this: On the 19th October, that order being dated the same day, it is sworn that these three defendants were present at a meeting of the society, and that a letter from the solicitor was then read advising the society to consent to a perpetual injunction. I suppose it was upon that advice that the order was taken in the form it was. Therefore, I start with this, that it was at any rate notorious in the society that such an order had been made. Moreover, it is said that in the local newspaper there was a full account of these proceedings published. Well, after what took place on the 2nd November, these three trustees retire from being trustees, and on the 16th November, whilst this matter must have been fresh in the minds of every member of this society who attended in the least to its affairs, three other gentlemen, who are respondents to this motion—Thomas Hemming, Joseph Heath, and William Unett—were appointed trustees. That is to say, there being an injunction against three gentlemen in their character of trustees, to prevent their doing a certain act, they immediately upon that injunction retire, and three other members of the society step into their shoes, in their places, in the character of trustees. That was on the 16th November. On the 11th January next following a resolution was again passed by the same society, who had been advised by their solicitor to consent to a perpetual injunction, and had done so in the names of their trustees, to divide £2,000 amongst the members. At that meeting Mogg—one of the old trustees—was present all the time; another of the old trustees—Andrews—says he was there in the beginning, but was called away, and denies he knew what was going to be done, and he says he did not go back to the meeting. On the 12th, the three new trustees—Hemming, Heath, and Unett—went to the bankers of the society and asked for a loan of £2,000. The bank, for some reason or other—I assume it was not because of the injunction, but because it had some doubt of their power of borrowing - refused the application. Upon that they took away the balance from the bank, took away the deeds from the bank to another bank, and from the new bank obtained £2,000, and divided the £2,000 among the members of the society. Mogg and the other trustees received their shares of the division the other old trustees, I mean, Mogg, Andrews, and Lely; and Mogg, it is sworn, assisted in the

division. The three new trustees have since repaid the amounts they severally received to the society. Now, I am asked to enforce this injunction by committal against the whole of these gentlemen—the old trustees as well as the new ones. There is no doubt about the jurisdiction of the court. If anybody, though not a person actually named in the injunction, chooses to step into the place of the man who was named, and to do the act which he was enjoined from doing, he has committed a very gross contempt of this court. One does not need any authority to say that. Here were three trustees, against whom an injunction had been granted—who had, indeed, consented to it, it appears, with the sanction of the society for which they were trustees; and immediately after they retire three new trustees take their places; and these three new trustees directly - or, at all events, a very short time after—proceed to do that very act which, in the person of the three former trustees, the society had consented to an injunction of this court restraining them from doing it. I have no doubt myself what the whole of this transaction was. It was an attempt, I cannot for a moment doubt, if the matter stopped there, on the part of the members of the society, and on the part of the three new trustees and of the old trustees, to avoid the order of this court; and, supposing the court's arm was not long enough to reach the new trustees, to attempt, by putting new persons in the place of those against whom the order had been obtained, to carry out, in spite of the order of the court, that which the court had prohibited. I have attended with great care to what all these gentlemen have stated in their affidavits. Lely was not present when the resolution was passed; Andrews says he was there, but did not know there was to be such a resolution proposed, and left before it came on. Mogg was present all the time, there is no doubt about that. On the part of the three new trustees, I find they made a joint affidavit, and in paragraph 4 they say, in fact, that the old trustees did not retire, and they were not put in their places, for the purpose of doing this: and then they say—"We have not had in our possession, or seen, any order of this court granting an interim injunction of this order, or any order making such interim injunction perpetual, or any copies of such orders respectively, and we were not, and have not been, aware of the contents of such orders, or either order." There their evidence on that point stops, and there is an utter absence of any denial on their part that they were perfectly well aware of the effect of the order which the court had made. I think I am bound to treat them as to all intents and purposes perfectly well informed of the order; and, after reading their affidavits, I remain of the opinion which I should have formed without them—that they perfectly well knew what the order of the court was, and that this was a device, to which they lent their names and active co-operation, to disobey the order of the court. Now, I cannot allow that state of things to exist. It is very necessary that the orders of this court should be observed implicitly, and if people are so foolish as to imagine that they can in this way, by a ruse, avoid and get rid of an order made by this court, it is time that this delusion should be put an end to. I do not think that, as to Andrews and Lely, I should be justified in imprisoning them; but as to all the other gentlemen, I commit them at once to prison, and I order all the costs of this motion to be paid by them all, including Andrews and Lely. If they want to make their submission to the court, and to escape from the punishment which this act has brought upon them, I advise them to arrange that the £2,000 shall be replaced.

Mr. Cozens Hardy, Q.C., and Mr. Chadwick Healey were for the plaintiff.

Mr. Ince, Q.C., Mr. Methold were for Andrews, Lely and Mogg.

Mr. Romer, Q.C., appeared for the new trustees, Hemming, Heath and Unett.

CASE 102.

STOOKE *v.* MUTUAL PROVIDENT ALLIANCE.

HIGH COURT OF JUSTICE.
QUEEN'S BENCH DIVISION.
DIVISIONAL COURT.
1891.
Jan. 27th.

Before
POLLOCK, BARON,
AND
CHARLES, J.

Friendly Society—Claim for Sick Pay—Rules—Contract by Member to abide by present rules and regulations of the society, and by any others hereafter certified by the Registrar of Friendly Societies—After he had been for a long time in receipt of benefit the society passed a rule, the effect of which excluded him from further benefit.

Held that as the contract expressly provided that the members should be bound by rules made from time to time it could not be said that the new rules were *ultra vires*, and that therefore the plaintiff was bound by them.

This case raised a question of great importance to the members of friendly or benefit societies, whether they are bound by the rules existing when they became members, or are also bound by any new rules from time to time duly made and certified, even though they may reduce or diminish the benefits to which they would be entitled under the rules existing when they joined. The defendants are a friendly society duly enrolled under the Friendly Societies Acts, 1829-1889. In September, 1861, the plaintiff became a member and received a policy which certified that he was entitled to the following benefits: –"10s. weekly in sickness up to the age of 65, for which he was to pay 1s. 7d. a month; medical attendance and medicine, for which he was to pay 4d. a week; weekly annuity commencing at £10, at death, premiums ceasing at death, 5½d. a week." The policy was granted on a proposal in which he agreed to abide "by the present rules and regulations of the society and by any others that may hereafter be made and certified by the Registrar of Friendly Societies." In 1885 the plaintiff had a letter from the secretary informing him that his case as a member of the sickness fund of the society having been medically reported to be of a permanent character rule 83 would govern his future claims for sick pay.

"Any member assuring for a weekly sum in sickness shall, during the continuance of any sickness certified to be of a permanent character, after a month's notice to be placed on full pay for such further period as shall allow to such member twenty-six weeks of full pay in the whole, reckoning from the commencement of such sickness, and such month's notice, next after on half-pay for thirteen further consecutive weeks,

and thence after during the continuance of such sickness on consecutive quarter-pay." "Pursuant, therefore, to this rule, your future pay will be at half-pay for the next ensuing four weeks, and from and after April 25, 1885, at quarter-pay for the remainder of the sickness."

The plaintiff duly continued to make the proper monthly payments to the society, and continued to receive the "quarter-pay" up to March, 1890, when he received another letter from the secretary containing "revised rules," by which he was deprived of all further sickness allowance :—

"I am desired to direct your attention to the rule 76, which limits the duration of quarter-pay to twenty-six weeks. I find, on reference to your case that you have now received quarter-pay for 260 weeks, and that during the 28½ years of your membership you have received £102 7s. 6d. and have paid in £27 1s. 6d. The Board desires to administer the new rule as considerately as possible, and therefore, though your sickness benefit has already exceeded the term, and is liable to immediate cessation, I am authorised to permit its continuance during the present month, after which it must necessarily cease. The Board desires to assure you that this change of rule has been necessitated by the past sickness experience of the society in order that all the members who are entitled to relief in time of sickness may have a fair and equal claim, in case of sickness, upon the funds of the society." The plaintiff (who is under 65) refused to assent to this, and, to test the question, brought an action in the County Court to recover £1 as "quarter-money" for the month ending May 2, 1890. It was admitted that if he was bound by the altered rule he had received all he was entitled to, but that otherwise he would be entitled to recover the sum for which he sued. The County Court Judge gave judgment for the plaintiff, but, on the application of the society, gave them leave to appeal on the condition that the costs of the appeal should be paid by the society in any event. They accordingly appealed.

Mr. A'Beckett Terrell appeared on the part of the society in support of their appeal, observing that the appeal was of far more importance to them than to the plaintiff, the sum at issue in the particular case being so small, though the question involved was of immense importance to these societies. The question was whether members of such societies are bound by alterations in the rules, though reducing the benefits to which they would have been otherwise entitled. He cited the case of Norfolk Permanent Building Society (1 Chan. Div., 481) and Gardner *v.* Lucas (3 Q.B.D.). It was a fundamental rule and principle of these societies that members are to be bound not only by the rules existing when they join, but by any subsequent rules made from time to time. It was true that in 1864 Lord Selborne (then Sir Roundell Palmer, Attorney-General) gave an opinion that "the altered rules will be binding upon the members admitted before the new rules were made except as to any relief or other benefit from the funds of the society of which any member may then be in the actual receipt or entitled to the actual receipt under the existing rules." But that opinion was given in a particular case. And in the present case the rules expressly provide for altering the rules and increasing the subscriptions.

Mr. Neish, for the plaintiff, contended that the directors had no power to alter the rules so as to deprive him of any of the benefits to which he was entitled under the contract entered into with him by the society.

One party to a contract cannot alter it to the prejudice of the other. He cited Auld *v.* Glasgow Working Men's Benefit Society (12 Appeal Cases). [Mr. Baron Pollock: There was no power in that case to alter the rules so as to affect the contract. But here the contract is to be subject to the existing rules and any rules afterwards to be made.] But not so as to affect the benefits stipulated for. [Mr. Baron Pollock: But there being a special stipulation of that character, where is the injustice of it?] Then the members may be deprived of all the benefits they have contracted for. [Mr. Justice Charles: You must admit that the subscriptions may be raised; and, if so the benefit of the sick pay would be counterbalanced and virtually reduced.] Not necessarily so; it might or might not be so.

The court came to the conclusion that as the contract expressly provided that the members should be bound by rules made from time to time it could not be said that the new rules were *ultra vires*, and that therefore the plaintiff was bound by them. The judgment of the County Court Judge, therefore, was wrong, and must be reversed.

Judgment accordingly.

CASE 103.

COURT OF COMMON PLEAS.

1840. Nov. 19, 22.

TYRRELL *v.* WOOLLEY AND ROTHWELL.

Friendly Society—Statute 10 *Geo. IV., cap.* 36*—Contract with sick member contrary to rules—Invalid.*

By one of the rules of a benefit society the committee were to meet "for the purpose of examining candidates for admission and to settle and determine any matter relating to the breach or non-observance of the articles of the society by any of its members, and their exclusion in consequence thereof, and to settle and determine any other matter or thing relating to the society, subject nevertheless to the confirmation of the society at their next quarterly meeting."

Held that the latter words were to be considered in conjunction with, and as qualified by, the preceding portion of the rule; and that they did not authorise the committee to enter into a contract which was in violation of the other rules of the society, *dubitante* Maule, J.

The other rules established a graduated scale of allowance to sick members, regulated by the state of the funds of the society, and by the period that the members continued a charge upon it, and prohibited them from working while they received such allowance; and also provided for the payment of certain sums on the death of a member, or of a member's wife.

Held that the committee were not authorised in making a contract with a sick member (who had met with an accident which disabled him from working at his trade) allowing him a fixed weekly sum for life,

with permission to attend to any business that he might be able to transact, in consideration of his giving up all further claim on the society during his life, and at his decease, *dubitante* Maule, J.

Held also, that the society, which was established before the 10 Geo. IV., c. 36, could not enter into any engagement, so as to bind the then members and also those who might afterwards become members of it.

CASE 104.

WREXHAM COUNTY COURT, 1890. *Sept.* 17, *Before* SIR HORATIO LLOYD.

EDWARDS *v.* LOYAL JOHN THOMPSON LODGE, M.U.I.O.O.F.

Friendly Society—Claim for funeral money—Contributions—Alleged special agreement to receive same contrary to rules—Claim disallowed.

The trustees of the Loyal John Thompson Lodge of Oddfellows, M.U., were sued by Mary Ann Edwards, of Hanley, Staffordshire, and widow of Hugh Edwards, as administratrix, for £12 due in respect of the death of her husband.

Mr. E. A. Ashmall, of Hanley, appeared for the plaintiff, and Mr. J. Hopley Pierce for the defendants.

At the opening of the case Mr. Pierce raised the question of the jurisdiction of the court, and a long argument ensued. At the close his Honour ruled that the case should proceed.

Mr. Ashmall then outlined his case. He said that the deceased man, Hugh Edwards, became a member of the lodge in 1866, and at the time was residing in the neighbourhood of Coedpoeth. He removed to Hanley, and made an arrangement with the lodge that he would remit his contributions every six months. This arrangement held good a number of years, and the last payment was made on December 21st, 1888. On June 8th, 1889, he died, and his half-yearly payment was due on June 21st, 1889, and consequently it was urged that deceased was out of benefit, and therefore his widow was not entitled to receive the money. Rule 12 provided that no member should be more than twelve weeks in arrears, and he understood that was the answer to the case. He would point out, however, that the lodge had allowed the six months' arrangement, which he urged, although contrary to the rule, was sufficient to keep him in benefit. In further proof that this arrangement was considered good by the lodge, an extra annual contribution of 7s. 6d. was charged, as he understood, to cover the extra trouble caused by this arrangement. The widow telegraphed to Mr. Heth Jones, the secretary, after the death, requesting him not to pay the club money to anyone only her, and the reply was "Everything all right."

The plaintiff was then called, and she said she was the widow of Hugh Edwards, whom she married in May, 1887. Four contributions had been made by her husband to the club by means of the post office. She and her husband, in December, 1888, sent the last payment in a registered

letter. The amount was 15s. An application was received from Mr. Heth Jones, but not for £1 15s. 9d. Since the date named no other application was received. After her husband died she telegraphed to Mr. Jones, asking that the money should be got ready, and a reply came by wire "Everything all right." The funeral took place at Coedpoeth, and when she applied for the money she was refused. She had taken out letters of administration.

Mr. Pierce, in examination, produced a letter dated December, 1889, signed by the deceased, stating that he sent 15s., and regretting that he could not send the whole sum, adding that he had to give three days' notice.

Witness said she had never seen the letter before, adding that neither she nor her husband could write. Continuing, she said that the reason why she sent the telegram asking that the money should be paid to her was because deceased had children by a former marriage. She swore that no money had been sent to his daughter to pay into the club.

This closed the case for the plaintiff.

Mr. Pierce said that the reason why the case was defended was his clients were only trustees, and as deceased was out of benefit at the time of his death, they could not, in justice to the other members, pay the money. He pointed out that to make such an arrangement as was alleged existed was against the rules, and, as a matter of fact, no such arrangement was made. He alluded to the letter received with the last payment, and contended that it showed clearly that the deceased was out of benefit. It also showed that the 15s. was not the sum required to clear off the arrears. After quoting the rules to show that a six-monthly arrangement would have been *ultra vires*, he called

Mr. Heth Jones, the lodge secretary, who produced the books of the society, said that all the money was paid by the daughter of the deceased. His contribution was 2s. per month, and 7s. 6d. was the charge which was made upon him in common with other members. No special charge was made, nor was any arrangement made about the payment of the money. He had no authority to make any such terms, and, had he done so, he would have exceeded his duty. In December, 1888, he wrote to deceased applying for £1 15s. 9d., and he received 15s. with the letter (which was disputed). In January, 1889, he wrote advising deceased of his position.

Cross-examined: He had received 15s. but had not put it into the funds because, it being on account, he held it over for the balance as allowed by the rules. He had informed the lodge of the receipt of the money.

Mr. Pierce here interposed, and said that the telegram sent by Mr. Heth Jones was in answer to a request made on the part of the deceased's family that he should make all preparations for the funeral.

Mr. Thomas Jones, one of the trustees, said he never heard of any arrangement having been made as had been suggested.

Mr. J. Kerrison Jones, secretary of the district, said such an arrangement would not have been sanctioned for a moment. The secretary of a lodge was often asked to pay contributions.

Mrs. Belton, daughter of the deceased, said she had paid contributions on behalf of her father, and produced the cards.

His Honour, in giving judgment, said the rules provided for the subscriptions being paid monthly, and clearly no officer of the society would have power to alter them unless by express resolution of the lodge. He did not think it necessary to express an opinion as to whether an arrangement under any circumstances could be come to, which would abrogate the rules of the society; but he must say he came to the conclusion that there was no money paid in 1888, until the 15s. paid in December. There had, no doubt, been a six months' arrangement, but in 1888 the subscriptions were allowed to run twelve months, and then the secretary wrote stating that there were arrears owing to the amount of £1 15s. 9d. If that were true then the deceased, Hugh Edwards, was entirely out of benefit at the time of his death. It had been said that it was a hard case both for the society and the deceased's widow, and he thought the hardship upon each side would be best met by each party paying their own costs, with judgment for the defendants.

CASE 105.

CONWAY POLICE COURT. 1894, *July* 2. WILLIAMS *v.* RAEMEN FRIENDLY SOCIETY.

Friendly Society—Claim for Sick Pay—Alleged Neglect to pay Contributions—Forfeiture—Claim allowed.

At the Conway Police Court, before the Rev. W. Venable Williams and other magistrates, Robert Williams sued the Raemen Friendly Society for a sum of £1 15s., arrears of sick pay. Mr. J. J. Marks, Llandudno, who appeared for plaintiff said the amount claimed was arrears for three months and three days' sick pay, and the contention of the defendant society was that the plaintiff, by reason of neglect to pay his contributions, had forfeited the sum. On the part of the plaintiff, Mr. Marks urged that it was the duty of the society to deduct from the sick pay due sufficient to cover the contributions to the sick fund. This they did not do, and now they told plaintiff he was no longer a member of the society. Robert Williams, plaintiff, said he had been a member of the society for nearly forty years. On the 26th December, 1892, he fell ill, and in January, 1893, he received 16s. 9d. sick pay which was the full amount due, less 7s. for subscriptions up to date. In February he received £1 2s. 9d., which was a deduction of 1s. After that, up to December, 1893, he received every four weeks the full sum of £1 3s. 9d. After December payments were stopped, at which time he received a letter, purporting to be from the secretary, saying he was no longer recognised as a member of the society.

In reply to the chairman, Mr. Marks said he could not produce any authority empowering the club to make any deductions on account of sick pay, but it was the custom with other clubs.

Mr. David Jones, Llanrwst (who appeared for the society): During the last twelve years have you received £100 from the society?

Plaintiff said he could not answer the question as put; but since 1876 he had been more or less continuously on the society.

Mr. Jones: Did you receive in 1876 £14; in 1880, £8 7s.; in 1882, £11 12s.; in 1884, £6 4s.; in 1885, £9 8s.; in 1886, £9 17s. 6d.; in 1890, £15; in 1891, £7 16s.; in 1892, £4 6s.; and in 1893, £15 9s.?

Plaintiff did not deny that he had.

Mr. David Jones: Have you no investments?

No; nor have I ever had any, anywhere.

Did you not receive a sum of £200 some time ago?

Oh, well, that was a promissory note—(laughter),—and that's eight years ago. I have not a penny in the friendly society now.

The chairman: Have you ever had?

Yes; but I had a Chancery suit, and lost every penny.

When you were receiving sick payment in 1882 you had money?

I had not a penny.

In reply to the chairman, plaintiff said he was not in receipt of sick pay during the time he was acting as insurance agent.

Had you no other employment for twelve years?

No; only living on my friends.

During the last twelve years?

Oh, no; during the last four years. Before that on sick pay, because I was in very bad health.

Further cross-examined, plaintiff admitted that he had received the full amount of sick pay due to him from April to December, 1893, but had not remitted the shilling, the amount of his subscription. That was because the club had 15s. in hand.

Re-examined: In previous years, when he was receiving sick pay, his subscriptions were always stopped from his sick pay.

Mr. John Jones, president of the society, said it was not true that in times past subscriptions were stopped from the sick pay of the plaintiff.

Judgment was given for plaintiff, without costs.

CASE 106.

QUEEN'S BENCH DIVISION.
Before FIELD AND BOWEN, J.J.
1882.
March 7, 18.

TAYLOR (APP.) *v.* COLLINS (RESP.).

Friendly Societies—Default of subscriber—Default of society—Full period of payment entitling to benefit not complete—Forfeiture—Relief—38 & 39 *Vic., cap.* 60, *sec.* 30, *sub-sec.* 2.

C., the husband of respondent, was a subscriber in the appellant friendly society. By the rules of the society a

subscription for a period of twenty-six weeks entitled the subscriber to a "half benefit;" and it was the duty of the collecting agent of the society to collect subscriptions from the members. C. subscribed for eleven weeks from 17th January, 1881, and then changed his residence, and the collector did not call for his weekly payments. No further sums were ever paid by C. down to 29th September, 1881, when he died. His widow, the respondent, claimed £11 5s. as "half benefit," and, on the society refusing to pay it, preferred a complaint to a police magistrate for the Metropolitan district, who made an order upon the society to pay the amount claimed. The society appealed.

Held, on appeal, that the magistrate was wrong, and that the non-compliance with the rules of the society on the part of the person represented by the respondent was a bar to the recovery of the sum claimed, and that the alleged default on the part of the appellant society could not cure the defect in the title of the claimant.

This was a case stated by a stipendiary police magistrate under 20 & 21 Vic., c. 43. It appeared that on the 26th November, 1881, a complaint was preferred under the Friendly Societies Act, 1875, by one Margaret Collins, widow of G. F. Collins, deceased, against F. Taylor, manager of the Royal Liver Friendly Society, on the ground that he had unlawfully refused to pay to the said Margaret Collins a sum of £11 5s., being the sum payable under the 23rd rule of the said society upon the death of the said G. F. Collins.

The material facts of the case were as follows:—On the 17th January, 1881, the said G. F. Collins, then residing at 293, Oxford Street, Stepney, duly became a member of the said society on the payment of an entrance fee of 6d. and subject to a weekly payment of 3d. according to rule 23 and Table No. 1, schedule B, attached to the said rules, whereby an insurance was effected payable at his death in accordance with the said rules.

The following week, and for eleven weeks thereafter ending on the 4th April, 1881, he paid his first and other subscriptions pursuant to the 23rd rule of the society.

From and after the said 4th April, down to the date of his death, namely, the 29th September following, no collector or agent of the district wherein the said G. F. Collins resided, nor any person on behalf of the said society, called for any such subscription, nor was any written or printed notice delivered or sent by post or otherwise, or left for him, as provided for by rule 21 of the said society, and sub-section 2 of the 30th section of the Friendly Societies Act, 1875; and no further subscriptions were paid down to the date of his death as aforesaid, although (as stated in the evidence of the respondent) she always had the 3d. a week ready if the collector had called, and that, therefore, the respondent gave notice of her husband's death, and claimed from the said society the sum of £11 5s., being the half benefit of the insurance of £22 10s. as mentioned in rule 23 as being a subscription for twenty-six weeks.

The magistrate was of opinion that, inasmuch as after the making of the eleven weekly payments, and down to the 4th July, no further

application for payment was made on behalf of the society during the subsequent weeks prior to the death of the said G. F. Collins, and more than twenty-six weeks having elapsed, his interest in the said society continued down to that event, and the respondent was entitled to a half-benefit, to wit, the sum mentioned in the said complaint; and gave judgment in the respondent's favour. The opinion of the court was requested as to whether or not the magistrate was correct in his determination.

Field, J.: This was a case stated by one of the police magistrates for the Metropolitan district; and the question was whether the complainant, Margaret Collins, was entitled to receive from the Royal Liver Friendly Society a sum of £11 5s., in consequence of the death of her husband, who had been a subscriber in that society. I may mention that the rules of this society are in accordance with the Friendly Societies Act, 1875. A subscriber on becoming a member may, as was done in this case, insure his life; and rule 23 provides that, if he pay a certain sum per week for twenty-six weeks, he shall be entitled to "half benefit," and if for fifty-two weeks, he shall be entitled to "full benefit." The facts appear to be shortly these. Collins, the husband of the complainant, became a member of the society, and went on paying his 3d. per week for eleven weeks; then he changed his residence; there appears to be some doubt whether Collins did, as he was bound to do, give notice of the change to the collecting agent; for this society does not call upon the assured to come to its offices and pay their amounts, but employs agents to call upon its subscribers. It is quite certain that the collector did not call, and for more than twelve weeks or so the wife, on behalf of the husband, did not pay the 3d. per week. In this state of affairs Collins died, and his widow, the complainant, asked for £11 5s., the sum to which she claimed to be entitled as "half benefit." She admitted she had not paid for the full twenty-six weeks, but relied on the equity of rule 21, on the ground that she was always ready to pay the money, and had made default in payment solely by reason of the collector not calling; and that, therefore, her interest had not been forfeited. The magistrate was of opinion that her contention was well grounded, and made an order for the payment of the sum claimed. But we have come to the conclusion that the learned magistrate was wrong, and that the complainant cannot by reason of the default of the society (if there was one) be in a better position than she otherwise would have been through her not having paid for the full amount of time requisite to entitle her to participate in the benefits of the society. When it is conceded that it is necessary to pay for a certain number of weeks before a person becomes in "half benefit," or a full member of, and interested in the funds of the society, it seems to us that as the condition alone upon which such right arises has not happened, the money now claimed cannot be recovered; and that rule 21 cannot support the argument that the default of the collector in not calling entitles the complainant to recover.

Bowen, J.: I am of the same opinion.

Appeal allowed.

CASE 107.

SPRING ASSIZES. 1850.

REGINA *v.* WOOLEY.

April 27. CROWN CASES RESERVED.

Friendly Society—False pretences—What are within the Statute.

If A. fraudulently represents as an existing fact that which is not an existing fact and so gets money, that is a false pretence within the Statute 7 & 8 Geo. IV., c. 29, s. 53. Therefore, where the secretary of an Oddfellows lodge told a member that he owed the lodge 13s. 9d., and thereby obtained from him that sum fraudulently, whereas the member only owed 2s. 2d., he was held to be rightly convicted of obtaining money under false pretences.

CASE 108.

IN RE ROYAL LIVER FRIENDLY SOCIETY.

CHANCERY DIVISION. CHITTY, J. 1887. *Feb.* 4, 11.

Friendly Society—Friendly Societies Act, 1875 (38 & 39 *Vic., cap.* 60), *secs.* 22 *and* 30. *(Revised Edition, Statutes, vol.* xvii., *p.* 663*)—Disputes—Certiorari—Jurisdiction.*

The provisions in the Friendly Societies Act, 1875, sections 22 (d) and 30, sub-section 10, for the reference of all disputes between the society and its members to the County Court are permissive only, and not peremptory; and therefore there is, in a proper case, jurisdiction to remove to the High Court by certiorari proceedings in an action commenced against a friendly society by one of its members.

In this case an order *nisi* had been obtained for a certiorari to remove from the Liverpool County Court to the High Court proceedings taken in the County Court by two members of the Royal Liver Friendly Society to have it declared that the payment of a sum of £1,500 in respect of certain costs was *ultra vires* on the part of the society, and cause was now shown against making absolute the order *nisi*.

The Royal Liver Friendly Society was a friendly society established in 1850 under the provisions of the Act then in force; the registered office being in Prescot Street, Liverpool, with agents in every part of the United Kingdom. At a meeting of the society held in Bristol on the 21st of July, 1886, new rules were certified in accordance with the Friendly Societies Act, 1875 (38 & 39 Vic., c. 60). Of these rules, rule 7, which was alone material to the present case, provided:—"The provisions of section 30 of the Friendly Societies Act, 1875, apply to this society, and are hereby incorporated with the rules of the society, and whenever the words 'the society,' 'a society,' or 'any society' occur they shall be held to include the Royal Liver Friendly Society. The provisions of the said section are as follows:—(10) In all disputes between a society and any member or person insured, or any person claiming through a member or person insured, or under the rules, such member or person may,

notwithstanding any provision of the rules of such society to the contrary, apply to the County Court or to the Court of Summary Jurisdiction for the place where such member or other person resides, and such court may settle such dispute in manner herein provided."

At this meeting a resolution was also passed for the adoption and payment of the legal and other expenses (amounting to about £1,600) incurred in conducting an inquiry by a syndicate as to the affairs and management of the society.

Two members of the society objected to the proposed payment as *ultra wires*, and having taken proceedings in the Liverpool County Court to obtain a declaration to that effect, a rule *nisi* for a certiorari was obtained on behalf of the society.

Mr. R. Neville now showed cause against the rule :—

If this court has jurisdiction it may be admitted that the case is one for granting a certiorari, but I submit that this court has no jurisdiction to deal with the case. By the Friendly Societies Act, 1875 (38 & 39 Vic., c. 60), s. 22, sub-s. (*d*) and 30, sub-s. 10, exclusive jurisdiction to deal with all disputes between members of a society and the society or its officers is given to the County Court. Under the similar provisions of the Building Societies Act, 1874 (37 & 38 Vic., c. 42), it has been held that the jurisdiction of the High Court to entertain proceedings between a building society and its members is ousted, and that the decision of the tribunal provided by section 36 of that Act is binding and conclusive. Municipal Permanent Investment Building Society *v.* Kent. And by the rules of this society it is expressly provided that "the provisions of section 30 shall apply to this society, and are hereby incorporated with the rules of this society." If, however, it can be said that the direction in the rules as to settlement of disputes under section 30, sub-section 10, is invalid, then section 22, sub-section (*d*), provides that where the rules contain no direction as to disputes, the member or person aggrieved may apply either to the County Court or to a court of summary jurisdiction, which may hear and determine the matter in dispute, and by the same section, where the dispute is decided under the rules, the jurisdiction of the High Court is expressly excluded in favour of the cheaper and more speedy local tribunal.

Mr. Romer, Q.C., and Mr. Rutherford, contra :—Unless exclusive jurisdiction has been conferred upon the County Court, we are entitled to have the rule for a certiorari made absolute. The provisions contained in the Building Societies Act, 1874, on which the majority of their lordships in Municipal Permanent Investment Building Society *v.* Kent held that the jurisdiction of the superior courts to deal with internal disputes in a building society has been ousted, are conspicuous by their absence in the Friendly Societies Act, 1875, on which the question here turns. To oust the jurisdiction of the High Court, it is not enough that the rules have so provided : there must also be clear enactment that the County Court alone shall hear and decide the dispute : Mulkern *v.* Lord, per Earl Cairns, assented to by Lord Blackburn. The effect of sections 22 and 30 is that, while the jurisdiction of the County Court is not to be ousted altogether by any provisions in the rules of a friendly society for settling disputes between the society and its members, the County Court has not exclusive jurisdiction, and the provisions of those sections are permissive only, and do not take away the jurisdiction of

the High Court. Then, we submit that this is not a dispute within section 22 of the Act, which must be confined to disputes the determination of which will settle the rights and liabilities of individual members either under the rules or under their policies of insurance: Mulkern *v.* Lord; Sinden *v.* Bankes.

[Chitty, J.: An individual member complains that the funds in which he has an interest are being dealt with in a manner inconsistent with the rules and to his injury as a member of the society. Surely that is a dispute within section 22 (*d*) between the society and a member?]

This contention was abandoned.

Mr. Seddon, in reply for Mr. Neville.

Chitty, J.: It was admitted on behalf of the plaintiffs in the County Court action that, having regard to the nature and magnitude of the claim, the case was one fit for a certiorari and proper to be removed into the High Court, if the High Court had any jurisdiction in the matter. The argument was directed to this point, that the effect of the statutes relating to friendly societies, and affecting this society in particular, was to exclude the jurisdiction of the High Court, and to confer jurisdiction exclusively on the County Court. Of course the burden of making out that proposition lay upon the plaintiffs; and the question is, whether the jurisdiction of the High Court is excluded. That question depends on the Friendly Societies Act, 1875, of which sections 22 and 30 are material.

Section 22 provides that every dispute between a member and the society, or an officer thereof, "shall be decided in manner directed by the rules of the society, and the decision so made shall be binding and conclusive on all parties without appeal, and shall not be removable into any court of law or restrainable by injunction; and application for the enforcement thereof may be made to the County Court." That section, therefore, renders it necessary to refer to the rules of the particular society in order to see whether the rules do provide the manner in which disputes of this nature are to be settled.

The argument that this dispute was not a dispute within section 22 obviously could not be sustained, and was abandoned.

The dispute in this case is unquestionably a dispute of the nature mentioned in section 22. Then sub-section (d) provides: "Where the rules contain no direction as to disputes, or where no decision is made on a dispute within forty days after such application to the society for a reference under its rules, the member or person aggrieved may apply either to the County Court or to a court of summary jurisdiction, which may hear and determine the matter in dispute." That sub-section, therefore, so far as the person aggrieved is concerned, is permissive only, and, so far as the County Court and the court of summary jurisdiction are concerned, confers jurisdiction on them. But it does not in terms, and I think it does not in substance, on its true construction, exclude the jurisdiction of the High Court. There are no negative words and no words of exclusion.

I turn now to section 30, which has been slightly amended (see 42 & 43 Vic., c. 9), but the amendment is immaterial for the present purpose, it being admitted that this is a society within the scope of the first part

of the section, *i.e.*, which receives contributions by means of collectors at a greater distance than ten miles from the registered office. As this society was in existence at the commencement of the Act, all the provisions of section 30 are, by sub-section 13, made applicable. Sub-section 10 provides : " In all disputes between a society and any member or person insured, or any person claiming through a member or person insured, or under the rules, such member or person may, notwithstanding any provisions of the rules of such society to the contrary, apply to the County Court or to the court of summary jurisdiction for the place where such member or other person resides, and such court may settle such dispute in manner herein provided." That again is a permissive section, giving the member the right to resort to the County Court or to the court of summary jurisdiction, but again not conferring exclusive jurisdiction on those courts. The effect of the section is that if there should be found in the rules a provision ousting the jurisdiction of the County Court, or of the court of summary jurisdiction, that provision is not to take effect against the statutory enactment. The statutory enactment, therefore, overrides any rule which provides that the member may not go to the County Court or may not go to the court of summary jurisdiction. The effect of section 30, therefore, is that the provisions of this section do, and from the enactment itself must, apply to this society.

Turning to the rules of this society, which were framed in 1886 (subsequently, that is to say, to the Act of 1875), rule 7, the only rule material to be considered, states that the provisions of section 30 apply to this society, and are thereby incorporated ; and then the rule sets forth *verbatim* the provisions of that section. It correctly states, therefore, that the society is governed by section 30, and in stating what the provisions of that section are it mentions sub-section 10, the effect of which I have already stated. For the purpose of answering the question whether the rules of this society do contain any direction as to the manner in which disputes shall be decided, I turn again to section 22, and the answer appears to be they do not. Sub-section 10 of section 30 merely enacts that in such disputes the member aggrieved may go to the County Court or court of summary jurisdiction, notwithstanding any provision to the contrary to be found in the rules. In these rules there is no provision to the contrary ; but with the exception of rule 7 there is no rule whatever on the subject of how disputes are to be settled. The result, therefore, appears to be that jurisdiction has been conferred on the County Court, but the jurisdiction conferred is not exclusive. After going through these sections it is hardly necessary to contrast this case with that before the House of Lords—Municipal Permanent Investment Building Society *v.* Kent. The substantial ground upon which the judgment of the House of Lords turned will be found in Lord Blackburn's address, and it is sufficient for me to say the House found (there was some difference of opinion, but I am bound by the judgment of the House of Lords) sufficient words excluding the jurisdiction of the High Court.

There are no such provisions in the Act before me as were to be found in the Act (Building Societies Act, 1874) on which that decision turned. The result, therefore, is that the rule will be made absolute.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 68.

CASE 109.

COURT OF QUEEN'S BENCH.
HILARY TERM. 1862.
Jan. 20.
COCKBURN, C.J.
CROMPTON, J.

EX PARTE WOOLDRIDGE.

Friendly Society—Jurisdiction of County Court— 18 & 19 *Vic., cap.* 63, *sub-secs.* 40 *and* 41—21 & 22 *Vic., cap.* 101, *sub-sec.* 5.

The officers of a friendly society, under one of their registered rules, expunged the name of a member of the society, who was in the receipt of sick pay, from the list, for alleged misconduct in demanding and receiving more than he was entitled to. The rule provides, that, "if a dispute arise, under the rules of the lodge, of any kind whatsoever, which they cannot conveniently settle, they must refer the same to a private committee; and if the same be not settled by them to mutual satisfaction, it shall then be referred to a district committee, and their decision shall be final." *Held (dubitante* Cockburn, C.J.) that the combined effect of the 18 & 19 Vic., c. 63, ss. 40 and 41, and the 21 & 22 Vic., c. 101 (repealing the first-mentioned section of the former Act) is to confer jurisdiction on the County Court to reinstate a member improperly expelled, or take such other steps as justice and the circumstances of the case may require.

This was a motion for a rule for a mandamus to the trustees of the Loyal Nelson Lodge of the Midland Counties Order of Oddfellows Friendly Society, held at Woodside, in the county of Worcester, to reinstate George Wooldridge a member of the society. It appeared that the said George Wooldridge had been for twenty years a member thereof, and having in August, 1860, lost his sight, became entitled, for a period of six months from that date, to full pay (7s. per week), and subsequently to half-pay (3s 6d. per week). The higher rate of payment was inadvertently demanded by and paid to Wooldridge by the treasurer for some weeks after he had ceased to be entitled to it; but upon the mistake being discovered, the excess was refunded, and he continued to receive his half-pay down to the month of August, 1861, when his daughter, whom he was accustomed to send for his pay, was informed by the treasurer, upon making application as usual, that her father's name had been struck off the books of the society, and that no further payments would be made to him. He subsequently made application in person, and was then informed that his name had been so expunged in consequence of his having, on the 6th May previous, received pay in excess, as above mentioned. On the next lodge quarterly night, the daughter again attended, and, on behalf of her father, tendered the quarter money then payable by the members; but the treasurer declined to receive it, repeating that the name of her father had been crossed out of the list of members. The rules of the society were enrolled in 1857, in pursuance of the Friendly Societies Acts. In answer to written applications subsequently made by Wooldridge for his sick pay, or that he might be heard in support of his claim, it was stated by one of the trustees "that the case had been heard before two committees and then referred to the whole lodge, according to rule 16, and it was clearly proved that he had received moneys unlawfully

in receiving whole pay when he should only have received half-pay, and that, after returning some of the moneys that he had received, he again sent, and they received the full amount again, and they must well know that they were doing wrong." Rule 16 is as follows:—"If a dispute arise under the rules of the lodge, of any kind whatsoever, which they cannot conveniently settle, they must refer the same to a private committee; and if the same be not settled by them to mutual satisfaction, it shall then be referred to the district committee, and their decision shall be final." By rule 22 it is provided, that "any member in receipt of the gift of his lodge, being found imposing thereon by stating himself sick and incapable of following his employment, usual trade, or calling, when he is able or actually doing so, shall be expelled." By rule 39, "If any officer, member, or any person whatever, by false representation or imposition, shall obtain possession of any moneys, etc., he may, upon complaint made by any person on behalf of the society, be summoned before two justices, and if the justices shall determine the complaint to be proved, they shall adjudge and order him to deliver up all such moneys, etc., and to pay, if they think fit, a further sum of money not exceeding £20," etc.

Mr. J. E. Davies in support of the application: Statute 18 & 19 Vic., c. 63, s. 40 enacts—"That every dispute between any member or members of any society established under this Act, or any of the Acts hereby repealed, or any person claiming through or under a member, or under the rules of such society, and the trustees, treasurer, or other officer, or the committee thereof, shall be decided in manner directed by the rules of such society, and the decision so made shall be binding and conclusive upon all parties without appeal; provided that when the rules of any society established under any of the Acts hereby repealed shall have directed disputes to be referred to justices, such dispute shall, from and after the 1st August, 1855, be referred to and decided by the County Court as hereinafter mentioned." By the 21 & 22 Vic., c. 101, s. 5, the above recited section is repealed; and it is provided that, if the rules of the society so direct, disputes are to be settled by the justices. Section 41 of the 18 & 19 Vic., c. 63, enacts that, "all applications for the removal of any trustee, or for any other relief, order, or direction, or for the settlement of disputes that may arise or may have arisen in any society, the rules of which do not prescribe any other mode of settling such disputes, etc., shall be made to the County Court of the district within which the usual or principal place of business of the society shall be situate; and such court shall, upon the application of any person interested in the matter, entertain such application, and give such relief, and make such orders and directions in relation to the matter of such application, as hereinafter mentioned, or as may now be given or made by the Court of Chancery in respect either of its ordinary or its special or its statutory jurisdiction." The County Court has no jurisdiction, inasmuch as rule 16 provides another tribunal, viz., a private committee; and then, if the matter in dispute cannot be by such means satisfactorily determined, it is to be referred to a district committee whose decision is to be final. The society allege that they have referred the case to these committees, and that their decision has been adverse to him; but the applicant has had no opportunity of being heard, and the rule in question is not applicable to a charge of fraud, which comes within rule 39 or section 24 of the 18 & 19 Vic. c. 63. [Blackburn, J.: It seems to me that you have addressed yourself to the wrong tribunal. If rule 16 apply, the case must be governed by it; if not, the County

Court has jurisdiction.] The applicant has no means of compelling the society to hear him but by application to this court. The proceedings under rule 16 were altogether irregular. [Blackburn, J. : Section 42 of the 18 & 19 Vic., c. 63, provides for carrying into effect the orders of a County Court. Crompton, J. : I do not remember that this court has ever granted a mandamus in a case like the present.] The difficulty arises under the recent Act. Sections 27 & 28 of the 10 Geo. IV., c. 56, provide for the settlement of disputes either by the justices or by reference to arbitrators ; and by the 33 Geo. III., c. 54, s. 15, members thinking themselves aggrieved may apply to the justices who are compellable to hear the parties. [Blackburn, J., referred to Hoey and others *v.* Macfarlane (4 C.B.N.S. 718).] That decision took place before the passing of the 21 & 22 Vic., c. 101, and the County Court had then, under the 18 & 19 Vic., c. 63, the jurisdiction which had before been exercised by the justices. [Cockburn, C. J. : I entertain doubts whether the County Court has jurisdiction, and whether the case comes within the meaning of the Acts at all. An expelled member ceases to be a member. Crompton, J. : It seems to me that questions like the present range themselves under section 42.]

Cockburn, C. J. : The other members of the court are of opinion that the County Court has jurisdiction to reinstate a member improperly removed, and that consequently this court cannot interfere ; and although not free from doubt, I defer to that opinion. It may be a question whether this expulsion, under rule 16, be not altogether idle and inoperative, inasmuch that the facts seem to disclose neither that kind of misconduct on the part of the applicant which would warrant expulsion, nor as regards the expulsion itself, anything more formal than a statement by some of the officers and members that he has ceased to be a member. The County Court Judge, however, when he has the facts before him, will, if the case fall within rule 16, direct the members of the society to deal with the matter in conformity thereto ; if not, he will himself enquire into the merits, and do what justice between the parties requires.

Rule refused.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 68.

CASE 110.

QUEEN'S BENCH DIVISION.
1887.
June 10.
DAY AND WILLIS, J. J.

THE QUEEN *v.* CATLEY ;
CATLEY *v.* BILL.

Friendly Society—Branch—Expulsion of member—Appeal from branch to society—Failure to decide thereon within forty days—Application to County Court—Jurisdiction—Friendly Societies Act, 1875 (38 & 39 *Vic., cap.* 60), *sec.* 22.

By the Friendly Societies Act, 1875 (38 & 39 Vic., c. 60), s. 22, disputes between members of a registered friendly society and the society are to be decided in manner directed by the rules of the society. By sub-section (d) where no decision is made on a dispute within forty

days after application to the society for a reference under its rules, the member or person aggrieved may apply to the County Court, which may hear and determine the matter in dispute.

A member of a branch of a friendly society having been excluded therefrom by the branch committee appealed, under the rules of the branch, to the general committee of the society, who failed to decide the dispute within forty days after application.

Held that the appeal was a "reference" within the meaning of the sub-section, and that a County Court had jurisdiction to hear and determine the matter in dispute.

Rule calling on the judge of the County Court at Peterborough and Enoch Catley to show cause why a prohibition should not issue to prohibit them from further proceeding with an action in the County Court between Catley as plaintiff and T. H. Bill as defendant, on the ground that the court had no jurisdiction.

There was also an appeal by the defendant against the judgment of the County Court on the ground that it was wrongly entered in point of form, but the argument and decision on such appeal do not require to be reported. The plaintiff was a member of the Peterborough branch of the Locomotive Steam Enginemen and Firemen's Friendly Society. He had been injured by a railway accident, and therefore in receipt of a pension from the funds of the society. For some years he had also received certain sick allowances made by the branch to Goodall, another member of it, and had transmitted the amounts to him. On an allegation by the defendant, who was secretary of the branch, that Goodall had resumed work, and, therefore, was disentitled to receive the allowance, the committee of the branch held a meeting to consider the conduct of Goodall and the plaintiff, and, after hearing the plaintiff and adjourning the matter, excluded him under rule 32, which empowered the branch committee to exclude a member for fraud, and provided that thenceforth he should forfeit all claims upon the branch, but that any such member might appeal from such decision to the general committee.

On March 18th the plaintiff's solicitor gave to the general committee of the society notice of an appeal against the decision of the branch committee. The notice was received on March 19th or 20th. An application was made to the general committee that, as the plaintiff's hearing and memory had been impaired by the accident, he might be represented by his solicitor before the general committee; but the application was refused. The plaintiff did not appear before the general committee, and on May 11th the general committee affirmed the decision of the branch. On June 9th the plaintiff's solicitor wrote for information as to the decision. On September 30th the plaintiff took proceedings in the County Court to recover twenty-six weeks pension.

At the hearing the County Court Judge at first decided in favour of the defendant on the ground of want of jurisdiction, but afterwards granted a new trial on the ground that no decision having been made by the general committee on the dispute within forty days after the

application to the society for a reference, the County Court had jurisdiction. The action was accordingly re-tried, and judgment was given for the plaintiff and exonerating him from any fraud.

Mr. Morten showed cause.

Mr. Douglas Walker in support of the rule.

Wills, J. : I am asked by my brother Day to express our joint opinion. The case is complicated and difficult, for the enactments in question are not so easy to understand as might be wished in matters of such general and great importance.

The first question is, what was the subject matter with which the County Court Judge had to deal? I assume for the moment that he would have jurisdiction under 38 & 39 Vic., c. 60, s. 22, sub-s. (d). That sub-section, so far as this point of the case is concerned, is perfectly free from difficulty : " Where the rules contain no direction as to disputes, or where no decision is made on a dispute within forty days after application to the society for a reference under its rules, the member or person aggrieved may apply either to the County Court or to a court of summary jurisdiction, which may hear and determine the matter in dispute." What was that here? The only "matter in dispute" was that the branch committee had excluded this member, and, as he alleged, wrongfully excluded him. Under rule 32 of the rules of the branch, when they had expelled him by their order, an appeal lay to the general committee.

But from rule 59, which provides for that appeal, it is plain that although it is called an appeal it is really a matter in dispute which has arisen between a member and the branch, because the only words giving the general committee power to act in the matter do not speak of any " appeal " or " right of appeal," but in terms relate to cases where a dispute has arisen between a member and the committee of the branch, and it is that state of things only which gives the general committee jurisdiction. Therefore, by those two rules the appeal from the branch committee is treated as a dispute arising between the member and the branch committee ; and it should be remembered that these are rules made with reference to this specific enactment, and I cannot doubt that it was intended that when such a state of things arose the matter was to be treated as one of those referred to in the Act. It was the subject matter of that dispute, and that only, that the County Court Judge had power to deal with in the proceeding under section 22 ; for it is not a general application to the County Court to enforce legal rights, but an application to the County Court Judge substituted for the tribunal created by the rules, and who is to act in their place.

The parties to the dispute were the branch committee on the one side, the member on the other.

The next question is whether the state of things had arisen here which entitled the County Court Judge to act at all? There is no guide to the answer except the words of the Act, which is a consolidating and amending Act, as the preamble shows ; and when we have to deal with a set of provisions which do not exactly correspond with what has been previously enacted it is impossible to judge whether the intention

of the legislature in slightly altering the phraseology was to consolidate or to amend. Therefore we must read the section *de novo* to ascertain what it means. After saying that every dispute between a member and the society shall be decided in the manner directed by the rules of the society, sub-section (d) provides that "where no decision is made on a dispute within forty days after application to the society for a reference under its rules, the member or person aggrieved may apply . . . . . to the County Court . . . . which may hear and determine the matter in dispute." Counsel for the society argued that this is a mere consolidation of certain previous Acts of Parliament showing clearly that the reference under rules in respect of which such a process as this was given applied only to a reference to external arbitration, and not to domestic forum apart from any outside arbitrator. It is impossible to ascertain from merely looking at the Act whether it was to consolidate or amend, and, having regard to the words of section 22, I cannot conceive why a reference of a dispute is less a reference of dispute because it happens to be a committee appointed for that purpose. It is a reference under the rules, and the only reference under the rules; and if there was any reason making it desirable that the limitation of forty days should be imposed on the action of arbitrators over whom the society has no control, *a fortiori* there is reason why the limitation should be imposed on the society itself or on a committee constituting the tribunal, when it is entirely within their own control how long they will take in settling a dispute of this kind. And also, if I am to be guided at all by the previous Acts whether by this Act consolidated or amended, I think they are in favour of my view, for in every one of those sections of the Act on which the learned counsel for the society relied, the word "arbitrator" is used, and it is used in expressions in reference to arbitrators, and that expression is dropped here. It seems to me, therefore, that it is clear the committee in this instance did not deliver their decision for more than forty days after the question had arisen. The learned counsel said there was a difficulty imposed by reason of the twenty-eight days notice under rule 59. But that twenty-eight days notice does not apply to this appeal at all, but to some further appeal. But whether it does or not, that is a difficulty created by the committee themselves, by which the society must stand; they have made the rule reducing the forty days to twelve, and they must abide by it. It does not affect the provision, carefully and wisely laid down by the Act, that these disputes should be promptly settled, and, if they are not, the person aggrieved may go to another tribunal. I think the very state of circumstances has arisen which gives jurisdiction to the County Court Judge.

If that be so, there is no other question, for there is a decision of a County Court Judge on a matter of law, and the only appeal from a County Court Judge to us is on matters of law. The result is that his decision that the appellant was unreasonably expelled stands, and that is a "matter in dispute." I do not go beyond that, and I think his decision ought to have stopped there, for it is not an action by the appellant to recover his pension. The County Court Judge seems to have treated the proceeding as if it was an action for the recovery of arrears of pension. I think that was a mistake; and that there is no jurisdiction under the Friendly Societies Act in this proceeding to award that remedy. There may be power to do so afterwards, for under section 22 an application to enforce the decision of the committee may be made to the County Court. But it is unnecessary to say more upon

this point, for I am quite sure that the society will act on the judgment of this court. The judgment of the County Court Judge must be varied to the extent which I have indicated.

Day, J., concurred.

Rule discharged.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 68.

CASE 111.

MASTER OF THE ROLLS.

1861.

April 30, *May* 1*st* & 23*rd*.

PARE *v.* CLEGG.

Friendly Society—Advances without observing the formalities prescribed by the Rules—Confirmation of Loan at a General Meeting—Statute of Limitations—Express trust—Representation of Society—Parties—Different Classes of Members—15 & 16 *Vic., cap.* 86, *sec.* 42, *r.* 9—*Illegality—Certificate under Friendly Societies Acts*, 10 *Geo. IV., cap.* 56; 4 & 5 *Wm. IV., cap.* 40.

By the rules of a friendly society the directors or central board had power to borrow money for the purposes of the society, provided certain specific formalities were complied with. The Board borrowed money from the plaintiff, which was applied for the benefit of the society without the formalities being complied with; but this loan was ratified and confirmed at a general congress of the society. *Held* that though the want of formalities might as between creditors of the society affect their priorities, it did not authorise the repudiation of the plaintiff's advance, of which the society had had the benefit.

Certain leasehold property was vested in three persons, who, by a general resolution of the society, were declared to hold the same for the benefit of the society. *Held* that an express trust was thereby constituted between the lessees and the creditors of the society generally, and that the statute did not bar the recovery of the simple contract debt of the plaintiff. The society consisted of several classes of persons. There were no trustees, board, or treasurer to represent it, and it had long since become insolvent and ceased to exist. *Held*, that in a suit instituted by the plaintiff (as representing himself and all other simple creditors of the society) against the lessees of the property for an account and satisfaction of the liabilities of the society, the society was sufficiently represented by the presence on the record of one of each class of members not represented by the plaintiff.

A society whose rules have been duly certified under the Friendly Societies Acts, cannot be considered as an illegal society, so as to prevent a creditor from acquiring the right of proceeding against it to enforce his debt.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 94.

CASE 112.

GREENWICH POLICE COURT.

PAGE *v.* THOMAS.

Friendly Society—Claim to be Reinstated a Member—False Declaration as to Health.

Held that the fact of the society receiving subscriptions from the member after discovering the truth showed an intention to condone the misstatements and prevented the society from refusing on the grounds of misstatement to give sick pay when it was claimed.

At the Greenwich Police Court, Mr. Patterson gave judgment in a case that had on previous occasions been before the court. The complainant in the case, for whom Mr. Scard, solicitor, appeared, was Joshua Page, who had summoned George Frederick Thomas, as secretary of the Comical Fellows' Society, and for whom Mr. J. T. Moss appeared, to be reinstated as a member of the society, and to share in its benefits. In the month of March, 1875, the complainant underwent an operation for cancer in Guy's Hospital, and in the month of May following he joined the above society, and signed a declaration to the following effect: "I declare that I am not subject to any external or internal disease, and if it shall be proved at any time that I have deceived the society, I agree to forfeit all claim." No mention was made at that time by the complainant of his having undergone an operation, but in the month of October, or early in November, the disease reappeared, and the complainant applied for sick pay. The society refused to admit him to such benefits, on the ground that the declaration was false, and that the complainant, at the time he made it, was subject to external and internal disease. Upon these facts Mr. Patterson gave the following judgment: In the present case it is clear that the contract between the complainant and the society is based upon the declaration made by the complainant on the 1st May, 1875, and which is evidently framed to protect the society against the admission of members suffering from or subject to latent and hidden diseases. But it is necessary to see the course taken by the society upon becoming acquainted with all the facts. I will use the defendant's own words at the hearing on the 25th January. He says: "I first heard that complainant had been operated upon for cancer in September last. We knew it by receiving this certificate from Dr. Carrington. We had never given complainant notice prior to this application for sick pay that he was disqualified." He applied for sick pay on November 4th, as shown by a certificate of Dr. Ayres. Further, on February 6th, he says, in answer to my questions: "I took subscriptions of complainant up to the 13th November last, and the first official information I had of his operation for cancer was in August." Now, to use an expression more properly belonging to another court, this conduct on the part of the society, in my opinion, condones the conduct of the complainant in misleading the society in the first instance by the concealment of the material fact of his having undergone an operation in March. The society have really elected to run the risk of the disease returning, and they must abide by the consequences of their election. Therefore, I must order that complainant be restored to the benefits as claimed by his summons.

CASE 113.

EXCHEQUER DIVISION.
Before KELLY, C. B., AND STEPHEN, J.
1880.
Tuesday, March 16.

ELLWOOD *v.* THE LIVERPOOL VICTORIA LEGAL FRIENDLY SOCIETY.

(Appeal from inferior court.)

Friendly Society—Appointment of collectors for—Collectors furnished with collecting books—Incoming collectors purchasing books of out-going collectors—Dismissal of collector—Property in collecting books—Whether in society or collector—Action by dismissed collector against the society for the detention of books—Rules of the society.

The defendants were a friendly society, and the plaintiff was one of some 1,300 persons employed by them, at a remuneration fixed by the committee of management, to collect the weekly premiums of the society. Rule 16 of the society's enrolled rules provides *(inter alia)* as follows: "The society shall have an unlimited number of collectors. The collectors shall be furnished with books at the society's expense (the said books to be the property of the society), in which they shall enter the names, ages, residences, date of entrance, and premiums of all members they may collect from . . . If any collector resign or be dismissed, he shall deliver up all . . . collecting books . . . being the property of or belonging to the society, to the treasurer, agent, or any other person or persons duly authorised to receive the same." It was the usual practice for a person desiring to become a collector of the society to purchase the collecting book of the collector desiring to resign, and the bargain between them for the sale and purchase of the book, though made outside the society was recognised by the society. In accordance with the said practice, the plaintiff purchased for £35 the collecting book of one J., a collector, and paid that sum to J. with the knowledge and approval of the society's secretary, and was thereupon appointed a collector in J.'s place and district. A few months afterwards, with their knowledge and approval, he purchased and paid £50 for the collecting book of K., another collector. In the first page of each book was the usual printed notice, "The collectors shall be furnished with books at the society's expense. Such books to be the society's property;" and on the back of each book, as was the usual practice, there was printed the plaintiff's name "M. Ellwood," and also the defendant's name.

The plaintiff was subsequently dismissed from his office of collector, and in an action by him in the Liverpool Passage Court, to recover damages from the defendants for wrongful dismissal and the detention of his collecting books, the jury found that he was rightfully dismissed, and that he had an interest in the books amounting to £50, whereupon judgment was entered for the defendants on the claim for wrongful dismissal, and for the plaintiff as to the books for £50, damages 1s.

On appeal from the finding and judgment in favour of the plaintiff, it was

Held by the Exchequer Division (Kelly, C.B., and Stephen, J.), overruling that finding and judgment, that the books were the property of

the society, and that the plaintiff had never any property or any interest whatever in them, recognisable by law or giving him any right of action against the defendants, and that the question of his interest in the books ought not to have been left to the jury.

Per Stephen, J. : Had the plaintiff been wrongfully dismissed, the fact of his having paid money for the books, in order to obtain the appointment of collector might have been a matter to go to the jury for their consideration with regard to the amount of damages for wrongful dismissal.

CASE 114.

COURT OF EXCHEQUER. 1838.

HARRISON *v.* TIMMINS.

An Officer or other person sued is not personally liable.

Under the powers given by certain Acts of Parliament, a director of the West Cork Mining Company was sued, and judgment recovered, in an action on a contract for work and labour, etc., done for the company.

Held that the court had no power to order execution to issue against him, the statutes in question not making such a director personally liable.

CASE 115.

TAYLOR *v.* DAVIS AND OTHERS.

COUNTY COURT OF KENT (HOLDEN AT GREENWICH). 1888. *May* 9.

Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap.* 60), *sec.* 22—*Dispute—Appeal from member to district—Rules—Deposit demanded from member by district officers—Member without means—District refuse to waive deposit—Appeal to Directors—Resolution rescinding resolution of District and ordering them to hear appeal—Refusal of District to obey decision of Directors—County Court Judge held that he had no jurisdiction.*

Held by the Divisional Court on Appeal (Cave and Wills, J.J.) that the County Court Judge ought to have enforced the order of the directors and directed the district to hear and determine the matter of the appeal.

The plaintiff, who had for 18 years past been a member of the Order, was, until the 29th June, 1887, a member of the Loyal Peace of England Lodge, on which day the lodge passed a resolution purporting to expel him from the Order. On the same day he gave notice of appeal from such resolution to the Woolwich District Branch, and the officers of the district demanded a deposit of £4, under rule 17, clause 3, and rule 3, clause 6, of the District Rules, as a condition precedent to the appeal being heard. Correspondence took place upon this, the plaintiff alleging that he was without means to make the required deposit, but the officers

refused to waive the deposit. On the 20th September, 1887, the Corresponding Secretary of the district wrote to the plaintiff, "It is decided to lay the whole matter before our next district meeting."

On the 24th September, 1887, the matter was brought before the district meeting, which passed a resolution confirming the action of the district officers.

On the 6th October, 1887, the plaintiff appealed to the directors against the resolution of the district, pursuant to general rule 75, section *c*, paragraph 1, and statements were made in writing by the plaintiff and the district in support of, and in opposition to, the appeal.

On the 18th November, 1887, the directors passed a resolution rescinding the resolution of the district, and ordering them to hear the appeal at once, without insisting on the plaintiff depositing the amount required for expenses, such requisition on the part of the district being contrary to the spirit and meaning of the general rules relating to the settlement of disputes. Under rule 75, section *c*, paragraph 4, of the General Rules of the Order, the decision of the directors is "final and conclusive and binding upon all parties concerned without power of further appeal."

The district declined to obey the order of the directors, and on the 9th March, 1888, the plaintiff commenced proceedings in the County Court of Kent, Woolwich, under the Friendly Societies Act, 1875, section 22, against the defendants, claiming (1) That the defendants might be ordered, within 21 days after the hearing, to hear and determine his appeal, or, in the alternative, that the Loyal Peace of England Lodge might be ordered to receive the contributions now accrued from the plaintiff, and upon payment of such contributions in all respects, treat the plaintiff as to past, present, and future benefits and otherwise, as if the resolution of the lodge had not been passed.

Mr. Hughes (for the defendants): I object to the jurisdiction of the court. E. C. Taylor, the plaintiff, has never given notice in writing to the C.S. of the district within three months from the lodge decision. He is now barred from appeal by lapse of time. Defects cannot now be cured. This court has only jurisdiction to hear an appeal when properly entered. The district committee refused to hear appeal as not properly entered, therefore there is no appeal. The directors were wrong in rescinding the resolution of the district, for the district committee never heard the appeal. The district committee, on the 24th September, 1887, decided that the district officers were correct in their action, but this was only an expression of opinion. It cannot be rescinded, for it was their opinion, and there is an end of it. The order of the directors to rescind the expression of opinion is quite useless and absurd. The directors' order to hear an appeal of which no proper notice has been given to the C.S., and when the rule for payment of expenses has not been complied with, and now that the three months limit for notice and the 40 days for hearing have long since passed, is unreasonable.

Mr. Ernest Forman (of the firm of Morse, Hewitt, and Forman), for the plaintiff: I ask to enforce the resolution of the directors of the 18th November, 1887, whereby the district are ordered to hear the appeal at once without deposit. Rule 75 of the General Rules, section *c*, par. 4, makes the directors' decision binding and conclusive. The Friendly Societies Acts, 1875, s. 22, provides that a decision made in accordance

with the rules of a society shall be binding and conclusive on all parties, without appeal, and shall not be removable into any court of law, or restrainable by injunction, and application for enforcement thereof may be made to the County Court. The rules are in the nature of a contract, binding upon all members of the order.

The Judge: I am of opinion that the notice of appeal was not given as required; that the deposit required was not made; that the district committee had not heard the appeal, but declined to do so on the grounds that the notice was not sufficient, and that a deposit was not made; and that the directors had no jurisdiction in the matter, as there had been no decision to appeal from, and on the same grounds I hold that I have no jurisdiction.

On the 11th June, 1888, a rule *nisi* was granted by the Divisional Court (Manisty and Stephen, J.J.) calling on the judge of the County Court and the defendants to show cause why the judge should not proceed to enforce the decision of the directors contained in their resolution of the 18th November, 1887, rescinding a resolution of the Woolwich District meeting, held on the 24th September, 1887, and directing the district to hear a certain appeal of the plaintiff.

N.B.—The following is a Report of the case heard on appeal.

HIGH COURT OF JUSTICE. QUEEN'S BENCH DIVISION. DIVISIONAL COURT. 1888. *June* 22. *Before* CAVE, J., AND WILLS, J.

TAYLOR *v.* DAVIS AND OTHERS.

Mr. Meadows White, Q.C., and Mr. T. Eustace Smith, instructed by Messrs. Morse, Hewitt, and Forman, 30, King Street, Cheapside, E.C., supported the rule.

Mr. Channell, Q.C., and Mr. H. A. Forman, instructed by Mr. Edwin Hughes, Woolwich, showed cause.

Mr. Arthur Powell appeared for the County Court Judge.

Mr. Channell, Q.C., and Mr. H. A. Forman: Under the district rules the district officers alone have power to remit a deposit, and there is no appeal from their discretion; therefore, everything subsequent to their refusal to dispense with the deposit goes for nothing. The power to demand or dispense with a deposit is vested in them absolutely. The resolution of the district was merely an expression of opinion, and the district objected to the jurisdiction of the directors throughout the matter.

Mr. Meadows White, Q.C., and Mr. T. Eustace Smith: If the district officers refuse to dispense with a deposit under district rule 17 (5), a dispute arises between the member and the officers under rule 17 (1) of the district rules. No deposit was demanded in respect of this dispute, which was then properly brought before the district committee on 24th September, 1887. At any rate, the district submitted to the jurisdiction of the directors by reason of their appearance upon, and making statements in opposition to, the appeal from their decision, which appeal was heard on the 18th October, 1887. The rules are in the nature of a contract.

Mr. Arthur Powell: The County Court Judge takes no part in the argument, but will act on an expression of opinion of the court, without putting the parties to the expense of drawing up an order.

Mr. Justice Cave: In what form will you take your order, Mr. White, and do you wish to be heard before the district?

Mr. Meadows White, Q.C.. We wish to be heard before our own tribunal, my lords.

Mr. Justice Cave: In that case this had better be treated as an appeal from the County Court, as the judge would only have to make the order which we can now make by consent.

Mr. Forman: Yes.

JUDGMENT.

Mr. Justice Cave: This case is one undoubtedly of some complexity, owing to the length of the correspondence and of some little difficulty in ascertaining what the facts are; but when one comes to have the matter fully thrashed out as it has been by the careful arguments which we have heard on either side, I think that one is able to come to a decision upon the matter, which, I trust, is in accordance with the merits of the case. The facts are shortly these:—On the 29th of July, 1887, Mr. Taylor was expelled from the Peace of England Lodge, of which up to that time he had been a member. He appealed to the district committee against the decision of his own lodge under the rules which have been referred to, and which I need not repeat again here. One of those rules requires that the submission shall be to a body formed partly of the general district officers and partly of twelve arbitrators, who are to be nominated every year for that purpose, and who, one would imagine, are nominated somewhat in the interests of the member in order to give him an opportunity, supposing he has been expelled from the society, to have the decision of persons who were thoroughly unbiased in the matter. The rules of the district society require that before this arbitration, or whatever you like to call it, is held, the appellant must deposit a sum of money to meet the expenses of the arbitrators and officers, and that sum in the present case was fixed at £4. The appellant alleged that he was unable to pay this amount, and consequently he applied to the officers, under rule 17, clause 5, to allow his appeal to be heard without insisting on his paying the amount. The form which his application seems to have taken, although I think nothing very much turns upon that, was a request to be allowed to be

heard before a special district meeting instead of being compelled to go before the arbitrators, and the result of that, as I gather from the rules, would have been that instead of having to pay £4, of which £3 was made up of the expenses of the arbitrators, he would escape having to pay £3, and would get off by a payment of £1. Rule 17, sub-clause 5, seems, however, more directed to exempt a man from the payment of the deposit altogether, and it provides that in case the district officers think that that is a proper proceeding they may exempt the man and thereupon direct him to be heard before the district committee, the result of that being that then there is nothing to pay at all, because as the district officers have, as a matter of course, to attend the district meeting, and the fund for paying them their 5s. is provided from other sources, this comes on as part of the general business of a meeting which must be held anyhow, and consequently there is nothing to be paid on the part of the appellant. Now, on the 8th day of July, the officers say: "We beg to acknowledge receipt of your communication dated 29th June, 1887, and to inform you that after due consideration we regret we cannot comply with your request. If you wish to appeal against any resolution of your lodge, a copy of such resolution must be forwarded within the time specified by rule. And you must deposit with the Corresponding Secretary the sum of £4 in accordance with district rule 17, clause 3." Now the appellant alleged that he was unable to comply with this requirement on the ground of poverty, and he seems from time to time to have written to the district officers, and also to the Grand Master, and to the Corresponding Secretary of the Order. Possibly that may have been an irregular thing for him to do while the matter was still not finally disposed of by the district officers. That, however, apparently is what seems to have been done, and after the Corresponding Secretary had written to the Corresponding Secretary of the district asking for explanation, ultimately, on the 20th September, the Corresponding Secretary writes this letter to the Corresponding Secretary of the Order: "Dear Sir,—I beg to acknowledge receipt of your communications dated the 13th and 14th inst., with correspondence from E. C. Taylor enclosed. I have laid the same before my colleagues and it is decided to lay the whole matter before our next district meeting." Now it may well be that the officers had the right if they chose to insist on it, of deciding this claim for exemption themselves, and of refusing to admit anybody else to over-rule or in any way to interfere with their decision, but as soon as they wrote to the Corresponding Secretary of the Order and expressed their determination to lay the whole matter before the next district meeting, it seems to me that there was on their part a waiver of any question as to whether there was or was not, an appeal from them, and an agreement on their part to lay the matter before the district meeting in order to obtain their views on the matter. I think it is quite clear that the appellant must have acquiesced in the course, because, on the 21st September, the Corresponding Secretary of the Order writes to the Secretary of the district, and says, "You should inform Mr. Taylor of your intention at once." That is the intention to lay the matter before the district meeting, and from a subsequent letter of Mr. Taylor's, written by him on the 26th September, when he had got the decision of the district committee, I say and think there can be no doubt at all that that intention had been communicated to him and he had acquiesced in it. Now the matter was laid before the district committee, and their decision was in accordance with the views of the district officers. A question might arise, perhaps, whether that decision of the district committee was the proper subject

matter of an appeal to the directors under rule 75, clause *c*, relating to the appeals to the directors. On the one hand, of course, it might have been contended that the object of all parties was to put this into the ordinary train involving the ordinary consequence ; on the other hand, it might have been fairly said that this was altogether a special matter in which the district officers were willing to treat the district committee as a species of informal arbitrators, and that it was not intended to go before them, like all other cases of arbitration, whose decision should be final. That point, however, I think is capable of being met by the observation that whatever might have been the case if the district officers had taken that point, yet that they did not in fact take it, and I propose to show that they did not take it by referring to the correspondence. The decision was given on the 24th September, and was communicated to Mr. Taylor by the Provincial Corresponding Secretary in a letter of the 26th September. At the same time a letter was written by the same gentleman to the Corresponding Secretary of the Order, giving him also the result of the application. Now, it is unworthy of remark that in stating the conclusion which had been come to the resolution is given in this form : "Resolved 13th—That this committee having heard all the correspondence as between Mr. E. C. Taylor and the district officers, do hereby endorse their action in declining to hear the appeal before a special district committee." Now, I will just observe in passing that they do not put it in what was not strictly the accurate form, but which was a form not calculated to give rise to any misunderstanding. The district officers have not declined to hear the appeal before a special district committee ; they declined to allow the appeal to go before a special district committee because they declined to waive the condition by which the appellant was required to pay £4 which he was unable to pay, and they refused to allow the matter to go before the special district committee, which, as I have said, could have been done at a less expense to him. That, however, is entirely immaterial. All parties understood what the thing was that was in dispute, namely, ought the district officers to have waived the right to call for the deposit under rule 17, clause 5, or ought they not. It seems that the meeting came to the conclusion that they were right in refusing to waive that right. Under those circumstances Mr. Taylor at first seems to have made up his mind to yield to the decision of the district meeting. Subsequently, however, he determined to appeal, and on the 6th October he sent notice to the Grand Master and Board of Directors : "Gentlemen, I hereby appeal to your Board against the annexed resolution, adopted by the Woolwich District on the 24th ultimo." Now that being done, notice was sent by the Directors or Corresponding Secretary to the Corresponding Secretary of the district, in which he says this : "You are summoned to appear," and so on, "to answer an appeal made by Mr. Taylor, to show cause why your district meeting, held on the 24th September last, passed a resolution refusing to hear an appeal by Mr. Taylor. You are also required to forward to me," and so on, "a copy of your resolution," and such like. Now that gave to the District Corresponding Secretary notice of what it was that formed the subject matter of the complaint of Mr. Taylor, and although there again the language used is not quite precisely accurate, yet the reference to a resolution passed on the 24th September perfectly clearly indicated to the district officers what it was that was being complained of, and could not have caused them any embarrassment, or have in any way misled them. On the back of that letter there is *nota bene* : "You will please to

attend carefully to the following instructions. On the receipt of this summons the district officers will consult together whether they are of opinion the case can be fairly explained by a written statement, in which case they will prepare such written statement showing the reasons of the District Committee for passing the resolution." Now, having received that notice on the 7th November the district officers write back by the Corresponding Secretary: "I am instructed by my colleagues to inform you that the district officers of the above district object to the appeal being heard by the Board of Directors, on the following grounds, namely, the 75th general rule, section *c.*, paragraph 1, line 10, reads thus: 'And on the same date shall forward copies of all correspondence to the Corresponding Secretary of the district concerned, or the case shall not be heard.' This rule, up to the present date, has not been complied with. And to respectfully ask if you require anything further from the district officers under the circumstances." Now, here that letter is very important; because, in the first instance, it does not state at all what is now put forward as the principal ground of objection, namely, that the directors had no authority to hear the appeal at all. That does not appear anywhere. There is an objection taken to their hearing the appeal, but that is not on the ground that they had no jurisdiction to hear it under any circumstances, but on the ground that the appellant had not complied with a particular condition precedent. So that it was quite clear that when that letter was written the district officers supposed that the appeal would lie, and that the only ground of objection to the appeal being heard was that the appellant had not complied with a condition precedent imposed on him by the rules. In answer to that comes the letter of the 9th of November, from the Corresponding Secretary of the Order, in which he says, "The appeal of Mr. Taylor is against the refusal of the district to hear his appeal." They had not, in their letter of the 1st of November, stated what was the appeal of which they were complaining, and the Corresponding Secretary of the Order, rightly or wrongly, thought that they were under the impression that the appeal against his expulsion was going to be heard; and, therefore, he writes back to them to say the appeal of Mr. Taylor is not against his expulsion: "The appeal of Mr. Taylor is against the refusal of the district to hear his appeal. Therefore, the point the directors will have to decide merely is, whether you were justified in refusing to hear his appeal. They cannot go into the merits of the case, because it has not been decided or heard by the district. Therefore, you had better send a statement why the district refused to hear the appeal. Unless you can show good reasons, the Board would not go into the merits of the case, but simply order the district to hear the appeal." Now, having received that letter the Corresponding Secretary of the district writes again to the Corresponding Secretary of the Order a letter of November 11th, which is undoubtedly an important letter. They first set forth the resolution in question. Then the letter goes on: "The district committee, in passing the above resolution, were perfectly satisfied that the statements made in the letters received by the district officers from Mr. E. C. Taylor could not be borne out by facts, and that he had, and has, ample means to comply with the 3rd section of the 17th district rule." Therefore the first point which they take is that the resolution of the district committee was right upon the merits, and, of course, that is a perfectly intelligible answer to make. Then they go on and say: "The Provincial Grand Master stated to the committee he had himself called on Mr. E. C. Taylor at his residence, and pointed out to him the substance of the 15th section of the 17th district rule,

namely (5) the district officers shall have power under the general rules to cause a charge or appeal to be heard before a district committee when they consider the persons bringing such unable to deposit the amount for want of means, and that it did not give the district officers power to call a special district committee, and intimated to him that if he was dissatisfied with the ruling of the district officers he should have applied to the quarterly district committee instead of communicating to the Board of Directors and Corresponding Secretary of the Order. But he persisted in applying for a special district committee as per documents forwarded herewith." Now, I apprehend that, that is not taken as any objection to the hearing of the appeal. It does not profess to be and it could not be; but what he says is this, we have had considerable difficulty with Mr. Taylor about his not doing as he ought to have done. He ought to have applied to the quarterly district committee. So that they apparently treat the matter as if an appeal actually had been made as a right, from them to the quarterly district committee, and they say instead of doing that he was irregular enough to communicate with the board of directors at once, and that, no doubt, is so—he did do that. The district officers, however, as I have already said, in their letter of September 20th had themselves proposed to lay the matter before the district meeting. Mr. Taylor had acquiesced in that proposal, and that had been done, so that it is no use going back to what had occurred before for the purpose of seeing whether his conduct was regular or irregular in the first instance. When they proposed to go before the district committee he had fallen in with that view, and, consequently, it was no longer open to them to object that the case did not properly come before the district committee. Then they go on and say: "And we wish it to be thoroughly understood that we have not refused, neither do we refuse, to hear his appeal, but cannot admit he is one of those persons who can claim exemption from the 3rd section of the 17th district rule." That is all. That is undoubtedly putting the thing perfectly clearly and accurately, but it is only putting it exactly as it was understood before on all hands, namely, not that they had refused to hear his appeal, but that they had refused to waive the condition precedent, without which his appeal could not be heard, and so, in fact, their refusal to waive the condition precedent, unless he complied with that condition precedent, which he professed himself unable to do, had, in fact, prevented his appeal being heard. These matters, however, are clearly put before the board of directors as an explanation of what had taken place, and the substantial answer which is set up in this letter is, the man has ample means. The district officers came to that conclusion, and the district meeting came to that conclusion, and that was a perfectly right and proper conclusion to come to. Then they wind up the letter in this way: "Having given a general outline of the reasons for the committee passing the 13th resolution, I remain, dear sir." Now that is what they are requested to do. It is suggested that the matter could be properly done by letter, and that the letters would adequately put the board of directors in possession of the reason why the resolution was passed, and to put the board of directors in a position to decide whether the resolution was properly passed or not. Now the next thing is the decision which took place on the 18th November, 1887, when it was resolved: "12.—That the following resolution of the Woolwich District Meeting, held on the 24th September, 1887, namely" (then they set out the resolution) "be rescinded, and that the Woolwich District be directed to hear the appeal at once without insisting on the

appellant depositing the amount required for expenses." Now, that resolution of itself shows clearly that the board of directors did know accurately and exactly what the point was that was at issue between Mr. Taylor and the district officers; that that point having been submitted to them by both parties, by Mr. Taylor by virtue of his letter of October 6th, and by the district officers by virtue of their letter of November 11th, was considered by the Grand Master and the board of directors, and was dealt with and decided in favour of Mr. Taylor. Now, I cannot help expressing my regret that under these circumstances the case having been heard by a body which, if not actually empowered by the rules to hear this appeal, and I am by no means sure that they were not so empowered, they at all events had had this thing submitted to them by both parties in order that they might adjudicate upon it. I say I think it is a very great pity that under those circumstances the district officers did not at once give way, and say, "Well, whether we are right or whether we are erring, we will bow to the expression of opinion of the tribunal which we have consented to go before, and we will hear this appeal without calling upon Mr. Taylor to make that deposit, which, as far as our judgment went, we thought he was in a position to make." I say I regret very much that they did not do that. I think, after they had written that letter of November 11th, the loyalty which is due from all these districts to the Grand Lodge and to the officers of the Grand Lodge certainly ought to have led them at once to waive their objection, and to hear this appeal as they were directed to do by the Grand Master and the board of directors. They, however, refused, and under those circumstances Mr. Taylor made his application to the County Court Judge for an order enforcing the decision of the Board, and ordering them to hear the appeal. Now, this is the judgment of the learned County Court Judge. He says: "After hearing the solicitors on each side, I was of opinion that the notice of appeal was not given as required," that is, I apprehend, the first notice of appeal. That point has not been argued before us to-day, and I do not understand quite how the learned judge could have arrived at that conclusion. At all events I see no reason for coming to that conclusion to-day, and I do not know that if I came to that conclusion it would at all affect one's decision here. But, as I have said, the only objection that was apparently taken in the first instance to the notice of appeal was, that the original notice of appeal was not accompanied by a copy of the resolution, and that was supplemented by a letter some time in the middle of September—within the requisite period, that is to say—to which the copy resolution is attached. The judgment goes on: "I was of opinion also that the deposit required was not made nor any other deposit offered, but the district committee had not heard the appeal, but declined to do so on the ground that the notice was not sufficient. I think the ground on which they declined to hear the appeal was, that the deposit had not been made; that the exemption had not been granted, and ought not to have been granted; and, consequently, as the required deposit had not been made, the appeal could not be heard. In effect, the only question before them was whether Mr. Taylor was entitled to his exemption or not, and they decided that the district officers were right in declining to exempt Mr. Taylor." However, that is not very material. "And that the Manchester lodge had no jurisdiction in the matter, as there had been no decision to appeal from." Now, this is where I am unable to agree with the learned County Court Judge. I have already said I do not think it necessary to decide whether there was an appeal strictly

under the rules against the decision of the district committee, because it appears to me quite plain that both parties assumed that there was. The appellant certainly did, because he gives his notice of appeal. The respondents, it seems to me, actually did, because the objection which they raised was an objection not to the competency of the court to hear an appeal at all, but to the effect that the condition precedent which they referred to had not been complied with. Whether that condition precedent had been complied with or not appears to me to be perfectly immaterial, because it was a matter for the decision of the court itself. It was an objection for them to dispose of, and we must assume on the facts appearing that they did dispose of it in favour of the appellant. I am not quite sure that that objection had any application at all to the matter of the resolution of the district committee, but whether it had or had not, it was one of those matters which the board of directors necessarily had to decide upon. They consequently decided upon it, and their decision is, I think, in the terms of the rule, final. In fact, both parties elected to go before the Grand Master and the board of directors to state their own views on the question in dispute, and to take their chance of winning; and having done that, it is not open to them to say that there was no jurisdiction on the part of the Grand Master and directors. They chose to submit themselves to that decision, and, in my judgment, that decision consequently is binding upon them. I think, therefore, that the learned County Court Judge ought to have enforced the order of the Grand officers, and that the proper order to make will be that the district meeting shall proceed to hear and determine the matter of the appeal.

Mr. Justice Wills: I am of the same opinion, but I do not think that this case can be taken as any rule for any other case, because it depends upon its special circumstances, and I do not think that any advantage will be obtained by an elaborate review of the extremely complicated and elaborate provisions which are made by this society for settling questions of discipline that arise between the different lodges in the district and members; but I think it is sufficient to say that matters had arrived in this case at that stage at which an appeal against the decision of the lodge expelling this appellant could have been properly made and properly lodged, and was in proper train for hearing. But Mr. Taylor was met with the preliminary objection that the district officers, under rule 17, clause 5, refused to allow his appeal to be heard before the district committee, because they did not consider him unable to deposit the amount required. If matters had stopped there and nothing else had taken place, I do not suppose that could have been reopened. But this decision of the district officers is clearly not an irrevocable thing, and at that time they had it in their power at any time within such time as the appeal could be heard, upon various materials or upon changing their minds, because they are not a court in the matter—they had it in their discretion to interpose. That being so, and an appeal being made to them, instead of saying simply. "There is no appeal from us, and we shall simply stand where we are," they did what I think was a very reasonable thing under the circumstances. They said, "We will lay the whole matter before the district committee;" in other words, "If you are content to take that preference we shall be content to take it," and accordingly it was with the consent of both parties, laid before the district committee, with the result that the district committee decided that the appellant was in the wrong and that the district officers were right. Now, under those

circumstances, there was a resolution of the district committee from which an appeal would lie, because from any decision of the district committee by which a member is aggrieved, an appeal would lie; and the appellant says, "You have come to the wrong conclusion; you have come to a conclusion which does me an injustice and a harm, therefore I shall appeal," and I think the rules provide for an appeal under such circumstances. It comes to my mind under the general rules, rule 75, division *c*, and sub-section 1. It seems to me that there was, therefore, an appeal from the decision of the committee. If it had been the mere voluntary expression of the opinion of the committee it might have been no decision at all, but would have been merely an expression of their moral support which they gave to the proceedings of the district officers, but which I think, under the circumstances had become really a resolution, deciding by the consent of the parties the question which was open between them under those circumstances, there is this appeal. Now, the only question is whether that appeal was properly heard. A great variety of highly technical objections had been taken, but I am satisfied, after a very careful perusal of the letters, more especially those of the 7th, 9th, and 11th of November, that the matter really was by consent of the parties dealt with in the manner that it was. I think it was a proper subject of appeal under the circumstances, and not requiring the consent of the parties to make it a valid matter of submission. I think if their consent was necessary the letters distinctly prove that the central body proposed to adjudicate upon it, that it communicated that view to both the parties concerned, both to Mr. Taylor and to the district committee, and that both parties clearly acquiesced in submitting the matter which was then in dispute and controversy to the decision of the board of directors. It may be that all the matters which are pointed out are matters of irregular procedure. It is clear that all the matters which are pointed out by the rules as matters of regular procedure, if everything is to be done perfectly strictly, were not followed. But here there is, I think, the most abundant evidence on the correspondence that objections of that kind were waived. The district committee, in the name of the district officers, had begun by taking the objection on the 7th of November, that, in consequence of the correspondence not having been properly forwarded, matters were not ripe for the hearing of the appeal, and that no appeal could be heard under those circumstances. They were answered by a letter on the 9th November, in which Mr. Collins, on behalf of the directors, pointed out that, looking to the nature of the question which they had to decide, which was simply whether the case should be heard on its merits or not, and intimated an examination of the correspondence was not necessary, and asked them, notwithstanding that, to forward their reasons for what they had done. The answer to that, which is on the 11th, is not "we still object because we have not received the correspondence," or "because you have no jurisdiction," but it is, "we gave our reasons," and some of them certainly are of a very technical character, "and we submit the matter to your adjudication as requested." Thereupon, I think, a matter arose which it was competent to the directors to decide, and they have decided it in a way which seems to me to be creditable to them, I must say; because it is quite clear from the correspondence that throughout they disapproved of the policy of throwing anything like difficulty in the way of hearing the appeal of a poor man, or of exacting terms from him which were prohibitory, and that they preferred that there should be possibly a mistake in the poor man's direction when considering whether

he was right in insisting on his poverty under the circumstances. I say they preferred that the mistake should be made in that direction rather than that justice should be refused, possibly on account of the poverty of the individual. And they point out that it is very undesirable that any notion of that kind should get abroad, and they finally decide that, in their view, the refusal was contrary to the spirit and meaning of the general rules. It is no part of my duty in this case to express any opinion whether they were right or wrong. Suppose they were never so wrong. Suppose the whole of Mr. Channel's argument and that of his learned junior on this point are well founded, and that their decision was a wrong one, that is immaterial. The state of things had arisen which gave them power to adjudicate, and they had adjudicated; and whether they had adjudicated rightly or wrongly is immaterial. One comes to this conclusion with the more satisfaction, because one cannot help feeling that it would be a very injurious thing for a society of this kind, if the notion got abroad that people were treated with pure technicality, or with any harsh administration of a rule respecting the poverty of the appellant, and the discretion made in the case of a deposit in such a case as this. All that is decided is this, it is not disposing of the matter finally, but simply deciding that the matter shall be heard by the proper domestic forum which the parties have established for themselves, but that it shall be heard upon its merits and ascertained whether this man was properly expelled or not.

Mr. Meadows White: My friend will agree to this form of order—with your lordship's permission—that the rule be made absolute, that an order be made by the County Court Judge.

Mr. Justice Wills: No, no. It is the order made by this court.

Mr. Forman: The endorsement which I ventured to put on my brief was this. This court doth order that the district meeting shall hear and determine the appeal to them. Will your lordships allow me to say "the ordinary district meeting," not a special district meeting?

Mr. Justice Cave: I think you are entitled to have it heard by the ordinary district meeting.

Mr. Meadows White: Then, my lords, with regard to costs?

Mr. Justice Cave: I think you are entitled to your costs.

Mr. Meadows White: We do not ask for costs against the County Court Judge, but against the parties who are named in the rule.

Mr. Justice Cave: No; of course you do not ask for them against the County Court Judge.

Mr. Forman: As regards the parties named in the rule, the trustees are named: I take it it will not be against them.

Mr. Meadows White: No; but they are named in the Act of Parliament as the parties against whom all legal proceedings should be taken. The costs will come out of the funds. Those will include the costs of the County Court.

Mr. Justice Cave: Who are the parties to the appeal?

Mr. Forman: The rule was served by the order of the court, so far as I am concerned, on the trustees and on the district officers.

Mr. Justice Cave: Are there district funds out of which the costs can be paid?

Mr. Meadows White: I should think so, my lord. These are the parties named in the Friendly Societies Act as being the proper parties to a litigation.

Mr. Justice Cave: Who are?

Mr. Meadows White: The trustees of any branch are the parties named in the Act of Parliament to be made parties to proceedings in litigation.

Mr. Justice Cave: I suppose all we can do is to give you your costs against the district officers.

Mr. Meadows White: Very well, my lord.

Mr. Justice Cave: Costs against the district officers?

Mr. Meadows White: My friend thinks the trustees are the proper persons.

Mr. Justice Cave: I do not know about that. Of course, the district officers are not to pay you out of their own pockets. I do not see how we can make the order against the trustees. The order must be against the district officers, and, I presume, under the circumstances, the society will indemnify them.

Mr. Meadows White: The 21st section of the Friendly Societies Act provides this: "The trustees of any society or branch, or any other officers authorised by the rules thereof, may bring, or defend, or cause to be brought or defended, any action, suit, or other legal proceeding in any court whatsoever, touching or concerning any property, right, or claim of the society or branch as the case may be, and shall sue and be sued, implead and be impleaded, in the proper manner, without other description than the title of their office."

Mr. Justice Cave: That is a totally different matter. That relates to a question of property. Here this relates to something done by the officers, for which *prima facie* they are liable.

Mr. Meadows White: Very well, my lord; we will take it in that way. We will take it against the district officers. Of course they will be indemnified by the society.

Mr. Justice Cave: For whom do you appear, Mr. Forman?

Mr. Forman: My brief is endorsed "Brief for the respondents." I take it that I really appear for the society. I have not any express instructions.

Mr. Justice Cave: I do not see how we can call on the trustees to pay them. The trustees have not any power one way or the other. It does not affect the property of the society, and they could not do it. Who are the defendants in the County Court?

Mr. Forman: The trustees, it seems to me, were improperly made defendants in the County Court proceedings, and when my learned friend obtained the rule from this court, I presume the rule was directed to be served on the judge, the trustees, and the officers.

Mr. Justice Cave: If you consent to its being made on the trustees, you appearing for them, and there being no objection, of course that is what it ought to come to, because these district officers are not to be looked to to pay the money out of their own pockets. They were supported by the district meeting, and the district funds ought to bear the costs.

Mr. Meadows White: Then the order for costs will be against the trustees and the district officers.

Mr. Justice Cave: Yes.

Mr. Meadows White: I should think it is best to take it against all the persons named in the rule.

Mr. Justice Cave: Yes.

Mr. Meadows White: Perhaps your lordship will allow the rule to be amended in that respect. It is against the officers of the lodge; it should be against the officers of the district.

Mr. Justice Cave: Yes.

Mr. Meadows White: That will include the County Court costs.

Mr. Forman: Then comes the question whether the proper persons were made defendants in the court below; the persons made defendants in the County Court proceedings were the trustees only.

Mr. Meadows White: They appeared, and the whole question was argued on the footing that the right parties were before the court.

Mr. Justice Cave: That does not seem to have been the point taken in the court below; very properly you fought the thing out on the merits in the court below. If you had taken that objection in the court below the thing might have been amended.

Mr. Meadows White: The costs will include the County Court proceedings.

Mr. Justice Cave: Yes; I suppose it ought to do so. I do not see how we can amend your rule, Mr. Meadows White, from the "officers of the lodge" to the "officers of the district."

Mr. Meadows White: The rule has not been made absolute, and I apprehend we can do so. The order taken now is by consent as to the appeal.

Mr. Justice Cave: Yes.

Mr. Justice Wills: Then there is an amendment by consent.

Mr. Meadows White: Yes.

CASE 116.

QUEEN'S BENCH DIVISION.
GRANTHAM AND CHARLES, J.J.
1892.
June 22.

WILLIS *v.* NEW UNION SOCIETY.

Friendly Society—Dispute between members—Arbitration clause—Jurisdiction of the Court.

A dispute, to be within the arbitration clause of the rules of a benefit society, must be one arising between the society and a party claiming as a member of the society.

This matter came before the court on an application for an interim injunction to restrain the defendants, a friendly society, from excluding the plaintiff, who had been a member for 55 years, and upon whom a vote of expulsion had been passed, from enjoying the benefits of the society.

Mr. Scott Fox appeared for the claimant; Mr. Scott for the defendant company.

The defendants objected that the court had no jurisdiction to hear the dispute, which they alleged was one which came within the meaning of one of their rules, which provided for arbitration in the case of any dispute between members and the society. No. 18 of the society's rules read as follows:—"Partial Benefit.—If a member, after receiving the benefit for one week or more, shall find himself able to go to work, he shall give a written notice of the same to the steward (or forfeit 3d.) and receive the benefit due to him according to the number of days;" and the claimant, who had been a member of the society for over 50 years, had frequently used that rule, but, shortly before the last occasion of his going off the sick fund, rule 18 was altered so as to read that, on any member recovering he should procure from his medical attendant a certificate, and give the same to the steward or forfeit 3d., etc. The claimant failed to comply with this new rule, and when the matter was brought to his notice he tendered 3d. as the fine due at one of the quarterly meetings of the society; when the officers declined to accept either the fine or his quarterly subscription unless he would pay a fine of £14. That the claimant declined to do, and he was accordingly struck off the list of members. After a lengthy argument on both sides,

Mr. Justice Grantham delivered judgment. He said he was at a loss to understand how a society could claim a right to fine a member £14 because he did not understand what a rule meant. As the claimant did not get a certificate from the medical officer they could have fined him 3d. They tried to fine him £14, because they alleged he hypocritically tried to obtain benefits he was not entitled to. In his opinion the claimant did all he ought to have done, and he could not help thinking there must have been some ulterior motive behind to account for the defendants' conduct. As regards the question whether the claimant was a member of the society at the present time, and so prevented from bringing his action in the High Court, the learned judge said he considered "Prentice *v.* London" (L. R. 10, C. P. 679) distinctly in point. Under the Friendly Societies Acts every effort had been made to cheapen litigation, and so it had been ordered that disputes among

members of a society should be settled by arbitration. Was the plaintiff at the present time a member of the society, and was it a dispute between a member of a society and its officers? He thought the claimant could not be considered to be suing now as a member, owing to the action of the defendants. The quondam member had tendered his quarterly subscription more than a year ago, when the matter was discussed by the officers, and afterwards they returned the subscription to him as he declined to pay the fine of £14. Accordingly he came to the conclusion that the claimant was justified in taking proceedings in the High Court; an injunction in the terms of the motion would be granted (over the hearing of the pending action), the costs to be reserved.

Mr. Justice Charles concurred.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 68.

BRISTOL COUNTY COURT.
1892.
Monday, Oct. 31.
Before
HIS HONOUR JUDGE METCALFE, Q.C.

CASE 117.

FLETCHER *v.* WALDEN.

Friendly Societies Act, 1875 (38 & 39 *Vic., cap.* 60), *sec.* 22—*Claim for Sick Pay—Dispute—Arbitration—No application by Member for under Rules—Jurisdiction.*

This was an action brought in the Bristol County Court by Henry Fletcher, a member of the True Friendship Lodge, of the Bristol District of the Manchester Unity, against James Walden, the secretary of such lodge, to recover the sum of £1 18s. for nineteen days' sick pay, claimed by the plaintiff. Plaintiff (an elderly man) appeared in person, assisted and advised by his son-in-law, who wanted to conduct the case on his behalf. The defendant and lodge were represented by Mr W. D. Watts (Bramble and Watts, solicitors, Bristol).

Upon the case being called, Mr. Watts took objection on behalf of the defendant, to the jurisdiction of the court, and explained to his Honour that the rules of the society provided for the settlement of disputes by arbitration. In support of his objection he cited the old case of Turner *v.* Scott, decided in 1857, and reported at page 373 of 28 *Law Times* Reports, vol. 7. (old series), and explained that the decision in this case had been followed by the courts continuously ever since that date. He also referred to section 22 (sub-section D) of the Friendly Societies Act, 1875, and said that no claim to have the case adjudicated upon in accordance with the rules of the lodge had ever been made by the plaintiff.

His Honour thereupon questioned the plaintiff at some length, with a view to ascertaining whether any application for arbitration under the lodge rules had been made by the plaintiff, but the latter, although continually prompted by his son-in-law, was unable to satisfy the judge that he had so applied.

Eventually, on Mr. Watts pointing out that the claim was for sick pay for nineteen days ending the 31st August, and that the plaintiff had issued his summons in this court on the 20th September, and could not, therefore, in any event, have waited the forty days required by the Act, the judge allowed the objection to his jurisdiction, and, in reply to some attempted further observations by the plaintiff's son-in-law, told the latter that so far from doing the plaintiff any service, he had been misleading him.

His Honour then asked if the lodge would undertake to adjudicate upon any claim which the plaintiff might make in accordance with the rules, and the defendant (Mr Walden) having replied in the affirmative, and said he was willing to give the plaintiff any assistance which he might require in properly taking his claim to arbitration in accordance with the rules, the judge ordered the case to be struck out.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 118.

COURT OF QUEEN'S BENCH. HILARY TERM. 1849.

EX PARTE PAYNE.

Building Society—Rules—Exclusiveness of Jurisdiction.

On rule for a mandamus to the judge of a County Court to hear a plaint brought by a member of a building society, within the 6 & 7 Wm. IV., c. 32, against an officer of that society, the 25th rule of the society directing a reference of all disputes to two justices of the peace, pursuant to the Statute 10 Geo. IV., c. 56, s. 27, which is incorporated in the first-mentioned statute.

Held that the right to bring an action was taken away; and that the 9 & 10 Vic., c. 95, s. 58, did not operate to revive a power of bringing actions in the County Courts, which had been taken away from all courts generally.

CASE 119.

EXCHEQUER CHAMBER. MICHAELMAS TERM. 1854. ERLE, J.

THE QUEEN AGAINST HENRY LEIGH TRAFFORD, ESQUIRE, & EDWARD RYLEY LANGWORTHY, ESQUIRE, TWO JUSTICES OF THE PEACE IN AND FOR THE BOROUGH OF SALFORD, IN THE COUNTY OF LANCASTER.

The rules of a benefit building society, duly constituted under Statute 6 & 7 Wm. IV., c. 32, contained a rule for referring all disputes between the society and its members to arbitration. The rules also specified the

terms on which each member should obtain from the society the amount of his shares on mortgage of building premises, and the terms on which such members, if withdrawing from the society, might redeem their mortgages. A dispute arose between a member, withdrawing from the society, and the society, as to terms on which, according to the construction of these rules, he was entitled to redeem his mortgage. The society refused to refer the dispute to arbitration. Two justices, on summons, made an order under Statute 4 & 5 Wm. IV., c. 40, s. 7, as to this dispute.

On application for a certiorari to remove this order as made without jurisdiction.

Held that the justices had jurisdiction only over disputes arising solely from the relation of member and society, and that this dispute arose from the relation of mortgagor and mortgagee. Rule for certiorari made absolute.

CASE 120.

COURT OF QUEEN'S BENCH. 1869. *Thursday, June 3.* COCKBURN, C.J. BLACKBURN, J. MELLOR, J. LUSH, J.

RE THE WEST LONDON PHILANTHROPIC BURIAL SOCIETY—CORDERY (APPELLANTS) *v.* GREAVES AND OTHERS (RESPONDENTS).

Friendly Society—Jurisdiction to determine disputes—Jurisdiction of Justices—Acquiescence in want of Jurisdiction—Certiorari—21 & 22 *Vic., cap.* 101, *sec.* 5.

Section 5 of 21 & 22 Vic., c. 101, gives to justices of the peace jurisdiction to determine disputes arising between members or representatives of members of friendly societies established under rule, 18 & 19 Vic., c. 63, or any of the Acts thereby repealed, "where the rules of any such society shall direct disputes to be referred to justices."

A dispute as to the payment of money having arisen between the representative of a member and the secretary of a friendly society, whose rules did not direct disputes to be referred to justices (there being a rule that such disputes should be finally decided by arbitrators appointed by the society), the secretary of the society was summoned before a magistrate to answer the complaint of having unlawfully refused to pay the money. The rules of the society were put in evidence, but the magistrate's attention was not called to the fact that the rules did not direct disputes to be referred to justices, and an order was made for the payment of the money.

A rule *nisi* having been obtained for a certiorari to quash the magistrate's order on the ground of want of jurisdiction.

Held that the conduct of the appellant in not directing the magistrate's attention to the absence of any rule directing disputes to be referred to justices, disentitled him to the discretionary writ of certiorari; and the rule was discharged with costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 68.

CASE 121.

QUEEN'S BENCH DIVISION.

1893. June 2.

DAY AND LAWRANCE, J.J.

SCOTT *v.* WILSON.

Friendly Society — Dissolution — Members misapplying funds—Absence of fraud — Friendly Societies Act, 1875, *sec.* 16, *sub-sec.* 9.

Mr. E. Jones (Mr. H. Avory with him) appeared in this case against a refusal by justices to convict the members of a branch of a friendly society of misapplying certain moneys which they had distributed amongst themselves.

The case was stated by five justices for the Borough of Rochdale.

The information against the respondents under section 16 of the Friendly Societies Act, 1875, was for that they did "unlawfully misapply and wilfully apply certain moneys of the Court Delight, No. 85, of the Rochdale Town District of the Ancient Order of Foresters Friendly Society, to wit, £65, to purposes other than those expressed or directed in the rules." The facts were as follows:—The respondents were the sole surviving members of the court. There had been no new member of the branch for twelve years, and the respondents decided to dissolve the branch, withdraw from the Order, and divide the funds, viz., £65. This was done, but the respondents had not obtained the consent of the Order to the dissolution of the branch and the division of the funds though they had written to the secretary after the division of the funds and told him of it.

It was contended by the appellants that according to the laws of the Order the respondents had no legal right to dissolve the branch and divide the money without the permission of the central body, except as provided by section 25 of the Act of 1875, that having done so they had committed an offence against section 16, sub-section 9, of the same Act as amended by 50 & 51 Vic., c. 56, s. 2. That the case of Barrett *v.* Markham, L. R., 7 C. P. 405, was decided upon section 22 of 18 & 19 Vic., c. 63. That such section was materially altered by section 16, sub-section 9, of the Act of 1875, and that such case did not apply. Further that it was not necessary to prove that the respondents had been guilty of any fraud or misrepresentation, and that on the facts the respondents were guilty.

The justices were of opinion that it had not been proved that the respondents had been guilty of any fraud or misrepresentation, and that they were bound to follow the case of Barrett *v.* Markham; they accordingly dismissed the information. The question for the court was whether the respondents were guilty of the offence under the section charged in the summons. Section 16 of the Friendly Societies Act, 1875, sub-section 9, provides in effect that if any person obtains possession by false misrepresentation of any property of a society, or, having the same in his possession, withholds or misapplies the same, or wilfully applies any part thereof to purposes other than those expressed or directed in

the rules of the society and authorised by the Act shall, on the complaint of the society, be liable on summary conviction to a penalty not exceeding £20 to be ordered to deliver up all such property and in default to be imprisoned for three months.

Mr. Jones said it could not be denied that there had been misapplication, the real question was whether it was necessary to show fraud; he contended it was not and compared the provisions of the older statute with those of the sections on which the charge was based.

Day, J., in giving judgment, said it was desirable that building or friendly societies should have ready means of enforcing their claims for even small sums. There had been great changes in the law. The system now provided was nearly as perfect as it could be. Taking into consideration the words of the section, the learned judge was of opinion that there had been no such misapplication as was contemplated by it. Section 16, sub-section 9, dealt with obtaining by false representation and with retaining property and misapplying it—that meant dishonestly withholding and dishonestly misapplying. The provisions as to penalty and imprisonment could not be construed to apply to persons acting quite honestly. Here the justices had found that there was no dishonesty. For twelve years no new member had come in. The branch was not an active one and all the members desired to put an end to it and distribute the funds amongst themselves. It had been said that the central body might have some claim but no substantive claim had been shown, and none could hereafter arise as the connection with the central body was severed, and the branch was at an end. The justices had refused to convict and they were quite right.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 78.

CASE 122.

COURT OF SESSION, SCOTLAND.
1878.
June 19.

MITCHELL *v.* BURNESS.

Friendly Society—Action by only surviving member for distribution of funds.

Membership of a society for the benefit of the widows and children of present and future members was reduced to one individual, and no means existed under the constitution of electing new members. In an action by the surviving member and the surviving annuitants against the judicial factor upon the estate of the society for declarator that the pursuers were entitled to divide the funds of the society among themselves.

Held, that although under the constitution of the society there was no purpose to which the funds could now be applied, the pursuers had no right to appropriate them.

Opinions: That the court had no power to give directions as to the application of the funds.

CASE 123.

STONEHOUSE COUNTY COURT. 1893. *June* 20.

STANEBURY *v.* PRIDE OF DEVON LODGE, M.U.I.O.O.F.

Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap.* 60), *sec.* 22—*Claim for Sick Pay—Refusal to accept Doctor's Certificate—Dispute—Jurisdiction—Nonsuit.*

This was an action in which John Stanebury, of 19, Claremont Street, Plymouth, labourer, claimed £2 18s. for nineteen days' sick pay, and 10s. for medical attendance, from the Loyal Pride of Devon Lodge (2,776) of the Independent Order of Oddfellows, Manchester Unity. Mr. F. Cecil Lane appeared for plaintiff, and Mr. Percy T. Pearce for defendant.

Mr. Pearce raised the preliminary objection that the judge had no jurisdiction on the ground that, according to the rules of the society to which complainant had conformed, all disputes must be referred to arbitration.

Mr. Lane said this was a dispute which had been dealt with by the lodge. His client had conformed to the rules of the society, who refused to accept a doctor's certificate with which he presented them. The question for his Honour to decide was whether the complainant was or was not a fit subject to come on the funds of the Order. The complainant was summoned to appear before a lodge meeting at which his case was discussed, and it was decided that he was not so ill as to merit sick pay. It was practically a dispute between two doctors. The case could not be decided under the Friendly Societies Act by Court of Arbitration or rules.

His Honour: Then the doctors disagreed?

Mr. Lane: Yes.

His Honour: And you ask me to decide which of the two doctors is right?

Mr. Lane: Certainly.

His Honour: I don't think any judge by himself could decide the question.

Mr. Lane pointed out that previous and subsequent to the date that his client was knocked off he was receiving sick pay.

Mr. Pearce argued that according to the rules of the society the complainant should have appealed to the district committee.

The judge intimated that he was inclined to agree with Mr. Pearce, but in view of the cases raised by Mr. Lane he must reserve his decision.

Mr. Pearce then pointed out that in a similar case where the judge had reserved his decision a prohibition order was made against him.

The plaintiff then went into the box and said he was sixty-three years of age, and had been a member of the society for thirty-eight years.

He received 10s. a week from the society to February 17th, when Dr. Corbett refused to certify that he was a fit recipient for the funds. He told the secretary he must have medical assistance. On February 27th he handed to the N.G. of the lodge a certificate signed by Dr. Wagner to the effect that he was suffering from lumbago. After that he was examined by Dr. Kirton, who said that there was nothing whatever the matter with him, and that he was enjoying very good health for a man of his age. He was under the care of Dr. Wagner until March 11th. On April 11th he again became chargeable to the society under Dr. Burke, and was still receiving sick pay from them.

The evidence of Dr. Wagner having been taken, his Honour adjourned the case for one month to consider the points of law raised.

At the next sitting of the court (19th July) the case was again called on, when

Mr. Pearce reminded his Honour of the facts, and pointed out that by the Friendly Societies Amendment Act of 1876, section 30 of the Friendly Societies Act, which Mr. Lane relied on, was not applicable to this case, because section 30 only applied to those societies with collectors getting in subscriptions at a distance of more than ten miles from their place of business.

His Honour asked Mr. Lane if he had anything further to advance.

Mr. Lane was entirely in his Honour's hands.

The judge said there was no doubt he had no jurisdiction, and there must be a nonsuit with costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 124.

QUEEN'S BENCH DIVISION. 1888. *May* 1*st*. FIELD & WILLS, J.J.

JOYCE *v.* NORTHUMBERLAND MINERS' FRIENDLY SOCIETY.

Friendly Society — Claim by representatives of deceased member.

This was a case of some importance to friendly societies. It was an appeal from the decision of the County Court Judge of Durham, on March 20, 1888, who had found for the plaintiff on a claim against the society in respect of a death through accident.

Mr. Lawson Walton appeared for the defendants, and Mr. Chitty for the plaintiff.

The plaintiff claimed in right of his deceased son, who had been a member of the friendly society, and met his death under the following circumstances:—The son was a collier, and left the mine about 5 o'clock in the afternoon, and he then went to a public house, which was on his road home, where his uncle, who was his "marrow," or mate,

was to bring him his share of the wages due. At that public house he stayed over four hours, and when he left about 10 o'clock was drunk. It appeared that he must have fallen over the parapet of a bridge on to the railway, for he was found dead on the line next morning. The words of the rule of the society under which persons could claim in respect of the death of a member were these :—" For accidents which may happen in the mine or at their ordinary employment above ground, or on their way to or from their work. Such journey shall be deemed to commence on leaving home and ending on their return." The question was whether the man met with his death on his way from his work. The County Court Judge held that as there were no restrictions in the rule about time on the journey, or as to sobriety or drunkenness, the deceased was on his way home from his work. The other point in the case was whether the County Court Judge had jurisdiction to try the case, there being a rule for the settlement of all disputes by arbitration. He held that he had under the provisions of the Friendly Societies Acts, 1875 and 1882, which apply to societies "receiving contributions by means of collectors at a greater distance than ten miles from the registered office of the society." In those cases on disputes a County Court Judge or a court of summary jurisdiction may be applied to, notwithstanding any rules of the society. The colliery was more than ten miles from the office. The mode of receiving contributions at the colliery was not through a collector paid and appointed by the members ; but the cashier of the colliery, an employé of the owner, in making out the "pay checks" for the men would deduct the amount of each man's subscription to the society. The pay check would then be taken to the proper official, and he would pay the men the sum named thereon. The colliery owner paid the society. The cashier of the colliery received remuneration from the society for his trouble. It was argued that the cashier so acting was not a collector within the meaning of the Act, and therefore the rule as to arbitration was not avoided by the statute.

The learned judges held that the County Court Judge was justified in finding that the cashier was a collector, and that therefore he had jurisdiction to try the case. They held him wrong in finding that it was on his way home "from his work" that the man met with his death. He was on his way home from the public house. The meaning of the rule was to protect workmen—men on their way to work, men at work, and men coming from work. It was not intended to apply to those who had ceased to retain that position. There was no time mentioned in the rule, and therefore the law would import the word reasonable time. Thus, a man might stop at a shop to purchase things, or to have a chat with a friend, but that was not the sort of delay there was in this case, where the man had spent four hours drinking. There was no reasonable evidence for the County Court Judge to find that the man was on his way home from work. The definition of journey in the rule was to show that the journey for which he was insured could not be carried beyond the time when he got home after his work, but that would not make that a journey which was not a journey. There must be a judgment for the defendants, with costs.

CASE 125.

RUGELEY POLICE COURT. 1876. *Oct.* 23.

THE QUEEN *v.* BROWN.

Friendly Society—Defaulting Secretary—Committal.

At Rugeley, on October 23rd, 1876, before J. T. Birch and W. C. Woodruffe, Esqrs., Arthur Brown, a young married man of respectable connections, was brought up in custody charged with having, on the 11th of January, 1875, and subsequent dates, whilst secretary of the Loyal Anglesey Lodge of Oddfellows (M.U.), at Rugeley, feloniously and fraudulently embezzled and stolen certain sums of money, the property of the said lodge. Mr. Hutchinson (from the office of Messrs. Hand, Blakiston, and Everett) conducted the case for the prosecution, and Mr. Thompson (from the office of Mr. Bowen) watched the case on behalf of the prisoner.—Thomas Gee, one of the trustees of the Loyal Anglesey Lodge, proved that the prisoner was secretary of the lodge from June, 1873, to September last.—Wm. Frith, jun., the present secretary of the lodge, deposed that a number of letters and documents produced were in the prisoner's handwriting.—John Hollins, secretary of the Fountain of Peace Lodge of Oddfellows (M.U.) Newport, stated that in 1874 Thomas Wheldon, a member of the Loyal Anglesey Lodge, at Rugeley, paid in contributions to the Newport Lodge, in order that they might be transmitted to the lodge at Rugeley. At the end of December, 1874, or early in 1875, the prisoner applied to him by letter for the money which Wheldon had paid in, and on the 9th of January, 1875, he transmitted the amount—£1 4s. 2d.—to the prisoner. The letter dated January 20th, 1875, was the prisoner's acknowledgment of having received the money. On or about the 4th of January, 1875, he received from prisoner another application for further contributions by Wheldon. On the 14th of the same month he forwarded the amount—£1 4s. 2d.—to Brown, and the receipt of the money was acknowledged by the prisoner in a letter dated January 15th.—John Davis said that in 1875 he was secretary of the Needwood Philanthropic Lodge of Oddfellows (M.U.), at Uttoxeter. In January of that year he received a written application from the prisoner for £4 1s. 6d., the amount of sick pay allowed by the Loyal Anglesey Lodge, Rugeley, to two members of the Philanthropic Lodge, named John Helms and David Phillips. He transmitted £1 17s. 6d. to prisoner on the 22nd of the same month, and received his acknowledgment of it. That sum, with £2 4s. paid into the Rugeley club by Helms and Phillips, made up the £4 1s. 6d. On May 25th following he received a written application from Brown for £2 on account of sick pay to Phillips. He believed that the amount, less 4d. for cost of post office order, was afterwards sent to prisoner. The letter produced, dated July 6th, 1875, was an acknowledgment of the prisoner having received £1 19s. 8d.—David Phillips gave corroborative testimony.—John Turner, secretary to the Loyal Ashcombe Lodge of Oddfellows (M.U.), Cheddleton, said that in 1875-6 a member of their lodge, named William Horden, resided at Rugeley, and falling ill there would receive the sick pay due to him from the Rugeley Lodge on behalf of the Cheddleton Lodge. He would also pay his contributions into the Rugeley lodge. On the 21st of January, 1875, the witness received from the prisoner an application for £16 6s. 8d. He transmitted the halves of two £5 notes to Brown on the 24th of February following, and received the prisoner's acknowledgment for them dated February 26th. On the 1st of March, the second halves of the notes were sent to Brown along

with a post-office order for £2 18s. 8d., which, with certain contributions received from Horden by the Rugeley club, made up the amount applied for. He received an acknowledgment from the prisoner for £12 18s. 8d. dated March 2nd, 1875. On the 26th of May following he received the letter produced applying for £2 18s. 4d. for sick pay to William Horden through the Rugeley Lodge. He sent that amount by post-office order on the 10th of June following, and received the prisoner's receipt for it.—Daniel Nutt, secretary of the Loyal Philanthropic Lodge of Oddfellows (M.U.), Fazeley, deposed that in 1874, George Hitchings paid in to him contributions to be forwarded to the Rugeley Lodge, of which he (Hitchings) was a member. On the 19th December in that year, witness received an application from Brown for the amount of Hitchings' contributions and on the 1st of January he sent him the amount (£1 4s. 2d.) by post-office order. Could not swear whether he received a receipt for that money. On the 21st of December, 1875, he received another application from the prisoner for £1 9s. 3d. for contributions paid in on behalf of the Rugeley Club by Hitchings, and he sent him the amount by post-office order, less 4s. for surgeon's fee. He received a letter, dated the 4th of January, 1876, acknowledging its receipt.—George Hitchings gave corroborative evidence.—Thomas Masters, public auditor for friendly societies, stated that on the 18th of September he received instructions to audit the prisoner's books. He went over to Rugeley and took possession of all the books and papers that he could find. Amongst them were the letters, etc., produced, which had been proved to be in the prisoner's handwriting. He also received other letters, etc., from various lodges, to which he had made application for them. He made a careful examination of the prisoner's books. The names of Thomas Wheldon and George Hitchings were entered in them as members of the Rugeley Lodge. He also found the name of William Horden as a member of the Cheddleton Lodge, and the names of John Helms and David Phillips as members of the Needwood Philanthropic Lodge, Uttoxeter. Helms, Horden, and Phillips were entered as persons receiving sick pay. Helms was dead. The amount which the Rugeley Lodge paid would have to be refunded by the lodges of which the recipients of sick pay were members. The prisoner's books contained no entry of any of the following sums; £1 4s. 2d. received from the Newport Lodge on the 9th of January, 1875; £1 4s. 2d., transmitted by the Newport Lodge to Rugeley on the 14th of January, 1876; £12 8s. 8d. transmitted by the Cheddleton Lodge in February and March, 1875; £2 2s. 4d. forwarded by the same lodge on the 10th of June, 1875, and which sum, with surgeon's fees, etc., made up the sum of £2 18s. 4d.; £1 4s. 2d. received from the Fazeley Lodge on the 1st of January, 1875; £1 5s. 3d. from the same lodge on the 28th of December, 1875; £1 17s. 6d. transmitted by the Uttoxeter Lodge to the Rugeley Lodge on the 22nd of January, 1875; and £1 19s. 8d. forwarded by the same lodge on the 6th of July, 1875.—J. T. Cox said he was Corresponding Secretary for the Stafford District of the M.U. of Oddfellows. In August last something occurred which caused him to come over to Rugeley in relation to prisoner's books and mode of transacting business. The result was that a meeting of the members of the Loyal Anglesey Lodge was convened on the 18th of September, and he, as a P.G.M. of the Unity, was requested to take the chair. On that occasion the prisoner was discharged from his office of secretary by a vote of the lodge, and his successor appointed. During the meeting the letter produced was handed up to him. It was dated September 28th, and addressed to the N.G. [It was stated there was an,

error in the date.] Witness was acting as N.G. on that occasion. The letter was in the following terms:—"To the Officers and Brothers of the Loyal Anglesey Lodge. Gentlemen,—I make an offer to refund all moneys in which I am behindhand if you would be so lenient as to take it. Trusting in your leniency, I remain, your obedient servant, A. BROWN."—The present secretary of the society stated that the letter was in the prisoner's handwriting.—B. T. Oswell, Deputy Chief Constable, deposed that he apprehended the prisoner on the 14th inst., and charged him with several acts of embezzlement. Brown made no reply.—Thomas Masters, re-called, stated that he had examined all the available books and documents of the Rugeley Lodge except the mortgage deeds, and the total amount of the prisoner's defalcations thus far ascertained by him was £137.—The prisoner, who reserved his defence, was formally committed for trial to the sessions, bail being refused.—We understand that the deficiencies in his accounts were first revealed through the absence of a considerable sum from the lodge-box, of which the prisoner had occasional possession; and that the previous auditors had failed to discover the deficiencies, imagining, it is presumed, that as the amounts were not entered, they were still in arrear.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *secs.* 84-90.

CASE 126

NOTTINGHAM ASSIZES, 1885. *July* 15. *Before* POLLOCK, BARON.

REGINA *v.* KEW.

Friendly Society—Alleged Embezzlement by Secretary—Registration.

On the hearing of an indictment for embezzlement against the secretary of a society the case was dismissed for want of proof of the registration of the society, the judge holding that the prosecution could have obtained the proper evidence from the Registry Office.

John Kew, 58, shoemaker, was indicted for embezzling several sums of £12 4s. 6d., £11 15s., and £7 4s. 10d., the moneys of the Pure Order of United Britons, of which he was secretary. Mr. Etherington Smith and Mr. Weightman appeared to prosecute, and Mr. Stanger (instructed by Messrs. Whittingham and Williams) defended.—Mr. Weightman, in opening the case, said that the charge against the prisoner was that, in his position of secretary of the Order, he embezzled certain sums of money which he ought to have paid over to the treasurer of the Order, which had its head office at the Milton's Head Hotel. The society was established for the usual purposes of aiding members in cases of sickness and death. It had the usual officers, and there were 52 branches, of which the prisoner was secretary of one. On the 31st of May, 1882, he was appointed the chief secretary of the whole of the society, with a salary of £40 per annum. His duties as secretary were defined by the 23rd rule, and he was to keep the books and accounts, carry on the correspondence, receive the contributions and fines, and at the close of each meeting pay over the cash to the treasurer. In connection with the Order there were district meetings, which took place twice a year,

and the president, treasurer, and secretary were deputed to attend the meetings. On the 1st of September one of these district meetings was held, when it was the duty of the prisoner to attend, for the purpose of paying over to the district fund the contributions in respect of funeral expenses. He also had to bring in the return sheets of money received. On August 31st the prisoner received £12 4s. 6d. from a Mr. Waters, secretary of the Cinder Hill Branch. He gave the prisoner the half-yearly return sheet, which showed the amount due to be £12 4s. 6d. This was Sunday, and in the presence of Parr he paid the £12 4s. 6d. to the prisoner. It being Sunday, Kew did not like to date the receipt on that day, so he dated on the 30th August. He said he would send the printed form on to Waters, which the latter had never received. No account had been given in the books of the receipt of this £12 4s. 6d. On the 4th of October there were certain arrears due from the Oaks Lodge at Alfreton to the amount of £11 15s. which ought to have been sent on the 1st of September. The secretary sent two post office orders of £5 7s. 6d. and £6 7s. 6d., which he made payable at Heanor. The prisoner received this £11 15s., and sent a receipt as though he had received it on September 1st, and this also was not accounted for in any books or accounts. The third sum was £7 4s. 10d., which was sent on the 24th of October from Mr. Stone, of the Loyal Hope Lodge, at Cradley, to the prisoner in a registered letter, which found its way into Kew's possession, but he never sent any acknowledgment or receipt. This sum he had not accounted for, and it did not appear in the books. Soon after this he absconded, and it was found that he had received £45 and £15 from the treasurer for funeral allowances, which had not been accounted for; in fact, no cash book or minute book had been produced.—Formal evidence was then given by Mr. J. E. Norman, solicitor, Nottingham, as to the registration of the society.—Mr. Waters also proved paying the £12 4s. 6d. to the prisoner and receiving the receipt produced.—After two witnesses had been examined, Mr. Stanger said he had an objection to raise with respect to the registration of the rules. He contended there was no proof of the registration of the rules or of the signature of Mr. Tidd Pratt.—Mr. Etherington Smith and Mr. Weightman contended that the certificate in the rules purporting to be signed by the Registrar was sufficient proof of the registration of the rules.—His lordship said the prosecution could have produced evidence of the registration for a small fee on applying to the Registrar's office. He held that there was no proof of the registration of the society. —Mr. Stanger supposed the case failed if the registration of the rules could not be proved.—His lordship said these were matters which should have been thought of by the prosecution previously. If there was no more evidence of registration he must direct the jury to acquit the prisoner.—A verdict of not guilty was then returned.—Mr. Stanger said it was only fair to say that he had evidence of the excellent character the prisoner had always borne. According to his instructions he had an answer to the charge, independent of the legal question on which the case had failed.—His lordship said as there was no further evidence it would be the duty of the jury to return a verdict of not guilty.—The prisoner was then discharged.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *secs.* 84-90.

CASE 127.

YORK CITY POLICE COURT.
1894.
Jan. 22.

THE QUEEN *v.* THOMAS SMITH.

Friendly Society—Embezzlement by Secretary—Conviction.

Thomas Smith, tailor, of Buckingham Street, who was arrested at Hull on Wednesday, was charged on remand with unlawfully withholding £132 10s. 1d., the moneys of the Independent Order of Oddfellows, at York, on the 2nd inst.

Mr. G. Crumbie prosecuted.

The prisoner was accommodated with a seat in the dock.

Mr. R. P. Dale, who appeared for the defence on the last occasion, did not now appear.

Mr. Crumbie opened the case, and said that the prosecutors were the Trustees of the York District of the Independent Order of Oddfellows, which is a branch of the Independent Order of Oddfellows, Manchester Unity Friendly Society, which has its headquarters at Manchester. The secretary of the branch was Mr. Benjamin Kilvington, and the treasurer the prisoner, he having been appointed to that post in 1884, and he continued in that position to the present year. His predecessor was the late Mr. Francis Rawling. By the rules of the society the accounts of the treasurer should be audited in June and December of every year, and it was the duty of the treasurer to present to the auditors in those months a complete account of the transactions of the previous half-year. The learned advocate said he regretted that it was compulsory for him to go back to the June account to explain matters to the Bench. In June, 1893, the prisoner presented to the auditors an account in his handwriting, which showed that he had a balance in his hands of £71 13s. 6½d. It also showed, in the prisoner's handwriting, that he had during the previous half-year deposited the sum of £50 in the bank, the wording of the notice being "Deposited in the bank £50." The bank referred to was the York Savings Bank. The ordinary pass-book of the bank was produced to the auditors at this audit, and under the date of April 11th was inserted an entry in this book of a deposit of £50. The auditors passed this book, not noticing at the time that the figures £50 had been erased, and only £25 had been deposited at the time. Based on that the auditors audited the account and found it correct. The December account was presented to the auditors on 21st December and it was the duty of the prisoner to show on this account the balance which was in his hands. The £50 was treated as being in the bank. The balance, instead of being struck, was ruled off, and one of the auditors asked the prisoner why he had not struck the balance, and he replied "Strike it yourself." At the same meeting the bank book was produced with interest added, showing the amount of £52 7s. 4d. in the bank. The bank book was passed in the same way, the erasures and alterations not being noticed by the auditors, but they struck the balance, and showed that the balance in the prisoner's hands was £122 10s. 1d., irrespective of what was in the bank. In addition to that it showed an entry of an alleged expenditure of £10 to the Percy Lodge of the York District in respect of the funeral expenses of a deceased member named George Smith, no relation of the prisoner.

That money was not paid, so that the total of the defalcations was £132 10s. 1d. The district within the last few days had had the £10 to pay. At this meeting the prisoner was told by one of the trustees that the amount in his hands was too large for any treasurer to have, and he said he would pay it, and he was told that he must do so. One of the trustees told him that he might want some money for death calls, and that he might keep £50 in hand to meet them. Prisoner said that he would pay it all, and led the trustees to believe that he was a man of fair means, and was able to do it. As a matter of fact, on April 11th, 1893, he had only deposited £25, and on December 30th he attended the bank with another £25, and paid it in. Mr. Camidge (manager) then noticed the bank passbook had been interfered with, and that between April 11th and December 30th there had been further alterations. What in June had been entered as £50 had been altered back to £25, but prisoner had omitted to alter the castings. Mr. Camidge immediately saw it, and drew the attention of the prisoner to it, and he said, "I don't understand it." Mr. Camidge replied, "You had better fetch the secretary," but this was not done. Then Mr. Camidge communicated with the secretary. A meeting of the trustees was immediately summoned, and on 2nd January the trustees went to the prisoner's with the book and asked him the meaning, and he at once said that the alteration of £50 to £25 was his doing. They then demanded of him the £132 10s. 1d., when he said he was not able to pay it, and that he had no means whatever. He made a memorandum that he held £132 10s. 1d. belonging to the York District, and also £10 belonging to the Percy Lodge in the same district. He had not paid the money, although application had been made to him for it.

Mr. Kilvington, secretary, gave evidence in support of the opening, and in reply to the prosecution said that the prisoner offered them his stock-in-trade and furniture to meet the demand, but they were not empowered to take it.

Mr. William L. Appleton (trustee) and Mr. John Pilmoor (auditor) gave corroborative evidence.

The prisoner said it was very hard that he was not given some opportunity to pay the money, he had no intention to commit a theft. If he had been given three weeks or a month he could have paid it, and he would never have been disgraced all over the town and county.

Mr. Munby (magistrates' clerk): Three weeks are 21 days, and you have had 20 days since the demand was made upon you. What have you done to satisfy the demand?

Mr. Crumbie: He ran away.

The prisoner said that he went to Hull to try and borrow the money from a cousin, but he found that he was dead. Whilst there he was arrested by the detective.

The Bench fined prisoner £10 with costs, and ordered him to pay the £132 10s. 1d., the amount due to the society, or in default two months' imprisonment.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *secs.* 84-90.

CASE 128.

WARWICK BOROUGH POLICE COURT.

1884.
April 5, 14.

REGINA *v.* COX.

Friendly Society — Embezzlement by Secretary — Conviction.

William Walter Cox, Coten End, Warwick, secretary to the Loyal Percy Lodge of Oddfellows, was brought up in custody, on a warrant, charged with that he, being the secretary of the above lodge, did feloniously and fraudulently embezzle and steal the sum of 7s. 3d. on the 19th December, 1883; 8s. 5d. on the 26th December; and on the 11th of January, 1884, the further sum of £1 5s. 3d. received by him on account of the said lodge.—James Alfred Butler, house painter, Emscote Road, said he was one of the trustees of the Loyal Percy Lodge of Oddfellows, Emscote District, and produced a copy of the rules of the lodge. The prisoner was the secretary of that lodge, and had the custody of the books. One of his duties, as set forth in rule 10, was to receive and enter all moneys and pay them over to the treasurer at the close of the business each lodge night. He was discharged on the 28th of January last. On that night witness took possession of the books. The 26th September, 1883, was a lodge night. Witness produced the secretary's night book, in which he had to enter all moneys received by him and copied by him into the pence-book. There was no entry in either of these books of the receipt of a sum of 8s. 5d. from Daniel Hall, a member of the lodge, nor was there any entry in either book of the sum of 7s. 3d. on the 19th of December from the same person. No entry appeared of £1 5s. 3d., in the name of T. Paxton, on the 16th January of the present year. Witness had seen a receipt for that amount in prisoner's handwriting, shown to him by Mr. Betts, the secretary of the Lawrence Sheriff Lodge, at Rugby. The entries in the books were all in the prisoner's handwriting. Prisoner had been secretary of the lodge since its establishment in 1877, and received a salary.—Upon this evidence prisoner was remanded until Monday.

The prisoner was on Monday, the 7th April, brought up charged, on remand, with embezzling various sums of money the funds of the Loyal Percy Lodge of Oddfellows. The case was partly heard on Saturday, and additional evidence was now taken.—Daniel Hall, blacksmith, Court Street, Leamington, said he was a member of the Loyal Percy Lodge of the Emscote District. He produced his contribution book, which showed that on the 26th September last witness paid to the prisoner the sum of 8s. 5½d., being his contributions up to that time. The receipt was signed by prisoner. On the 19th December witness also paid prisoner 7s. 3d., which the latter also entered in witness's book and signed. Witness paid the money to prisoner in the workshop, he and the prisoner working together.—John Betts, 19, Dunchurch Road, carpenter, Rugby, secretary to the Lawrence Sheriffe Lodge, Rugby, stated that during the whole of last year and the year before he received contributions of Frederick Paxton, who was a member of the Loyal Percy Lodge, and who paid his contributions into the Lawrence Sheriffe Lodge, Rugby. He afterwards remitted the contributions so paid in to the prisoner as secretary of the Loyal Percy Lodge, amounting to £1 5s. 3d., by post-office order on the 8th January, and on the 12th of the same month he received receipt produced, signed by the prisoner, for the amount in question.—P.C. Ravenhall spoke to apprehending prisoner on the previous Friday on the Emscote Road. Witness

read the warrant to him, and, in reply, he said "it was all right, and would not have happened if he had not been out of work; but there were others who ought to be had as well as himself."—Prisoner having been cautioned in the usual way, made a statement to the effect that he admitted receiving the money and omitting to enter it into the book. He offered to pay it into the lodge, and it was agreed to be accepted on the prisoner giving security, which he consented to do. He went with one of the trustees to Leamington, to see the secretary of the district, and it was agreed, if terms of security were offered, to allow him to pay the money. The person to be security went over in the afternoon to see the club officials, and he (prisoner) did not know until the Friday following (the day he was apprehended) that the security was not accepted. He had no more to say about the case, but he should like to speak a word for himself.—The Clerk: You had better reserve your defence. You have admitted the charge.—Prisoner: I should be glad if you could settle the case to-day, as I am out of work, and have a wife and family.—The Bench said prisoner would be committed for trial at the Quarter Sessions, which take place on Monday next. They agreed to accept bail, prisoner himself in £40, and two sureties of £20 each.

At the Warwick Borough Quarter Sessions, on April 14th, the prisoner was indicted for embezzling various sums of money, the funds of the Loyal Percy Lodge of Oddfellows.—Mr. Kemp (instructed by Mr. G. Fenton) prosecuted.—Prisoner, who was undefended, pleaded guilty to the charge, the facts in connection with which are given above.—Several persons were called to speak to the prisoner's character, including Mr. J. A. Butler, one of the trustees of the lodge, who described him as a man of good character up to the commission of the offence. In reply to the Recorder, the last witness said that the prisoner was paid for his services at the rate of one shilling for each member per annum, and his annual salary amounted to about 34s.—The Recorder, in sentencing the prisoner to six months imprisonment with hard labour, said that it was very painful to pass sentence upon a man who, hitherto, had borne such a good character, and who for a great number of years had discharged the duties of the lodge, as secretary, with great ability and honesty. At the same time it was a very serious offence, as prisoner received the money of poor men, who put their faith in him.—It was stated that the prisoner's total defalcations amounted to £29.

N.B.—See Friendly Societies Act, 1896 (59 & 60 *Vic., cap.* 25), *secs.* 84-90.

MIDDLETON POLICE COURT.
1884.
Oct. 30.
Before
H. HEYWOOD, ESQ., AND H. C. BLACKBURNE, ESQ.

CASE 129.

REGINA *v.* GREENHALGH.

Friendly Society—Embezzlement—Conviction.

At the Middleton Police Court, on Thursday, October 30th, 1884, before Messrs. Harvey Heywood and Henry C. Blackburne, a young

man named William Greenhalgh, a spindle and fly maker, residing in Parkfield, Middleton, was brought up under remand from the previous Saturday, charged for "that he, on the 28th day of June, 1884, at Middleton, then being employed in the capacity of a servant to the Independent Order of Oddfellows Friendly Society, of Middleton, aforesaid, did feloniously and fraudulently embezzle and steal a certain sum of money—to wit, £12 1s. 7d., received by him for and on account of the said society, his employer." Mr. R. Ashcroft, solicitor, said he appeared in that case on behalf of the Loyal England Glory Lodge, No. 24, Middleton District, to prosecute the prisoner for embezzling the sum of £12 1s. 7d., which he, as secretary, had received on behalf of the lodge and misappropriated. The facts of the case were exceedingly simple, and as he understood the prisoner intended to plead guilty, so that he could be dealt with summarily instead of being sent to the sessions, he would be very brief. Mr. Ashcroft then detailed the facts of the case, as given in the following evidence:—Richard Halliwell said: I am one of the trustees of the Middleton District of the Independent Order of Oddfellows Friendly Society. The prisoner was appointed secretary of the lodge on the 23rd December, 1882. It was his duty to receive all moneys and pay them over the following lodge night to the treasurer. On the 28th of June, 1884, I attended a district meeting at Rhodes along with the prisoner. I saw the sum of £12 1s. 7d. paid to the prisoner by the Grand Master; that sum was paid to him on account of the lodge of which he was secretary. There is no entry of that money in the cash book as having been paid by him, and it has never been paid over to the lodge.—Prisoner: Did you get any remuneration for attending that district meeting? Yes. Who paid it you? The chairman of the lodge.—James Ogden said: I am the tresurer of this lodge. It was the prisoner's duty to pay over to me all moneys he had received on behalf of the lodge. He did not pay over to me the sum of £12 1s. 7d. received by him on the 28th of June last, nor any portion of that sum. He ran away at that time, and I have not seen him since until now.—P.C. McKnight: I apprehended the prisoner at half-past seven o'clock on Friday evening last, the 24th of the present month, at his residence. I read the warrant over to him and he replied, "Is that all?"—Mr. Ashcroft: That is my case.—The prisoner was then charged in the usual manner, when he pleaded guilty, and said: "I hope your worships will be as merciful as you possibly can for the sake of my wife and children. I have five children.—Mr. Heywood: What is the deficiency?—Mr. Ashcroft: £23 9s.—Mr. Heywood: Is that the total amount?—Mr. Ashcroft: Yes. He has adopted half-a-dozen different ways of embezzling. He has received sums by post-office orders from members, and he has cashed these orders and put the money into his own pocket.—Mr. Heywood: When did this begin?—Mr. Ashcroft: It has all been done in this year.—Mr. Heywood: What is there known about the man's character?—Mr. Ashcroft: He had a good character when we took him on as secretary. There is nothing at all known against him.—Mr. Heywood: This is a very sad case for you to be here—a young man in the prime of life, and no doubt you have the ability to get your living honestly, and you have to be brought here charged with embezzling. There are so many who commence like you, taking small sums until it gradually gets larger and larger, that if you don't change your career there is only one end for you—you will be an outcast from society and become what we term a criminal. We believe that this will be a lesson to you, and that for the rest of your life you will amend your ways. Are you a married man?—Prisoner: Yes, and have

five children.—Mr. Heywood: And what is your business?—Prisoner: A fly maker.—Mr. Heywood: You have been very sensible in pleading guilty to the charge, as the evidence has been very clear against you. We propose to deal summarily with you, and we shall give you a very light sentence, and it is that you be imprisoned with hard labour for two months.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *secs.* 84-90.

CASE 130.

CROWN CASES RESERVED. 1861. *Nov.* 21*st.*

REGINA *v.* PROUD.

Friendly Society—Embezzlement by Secretary.

The prisoner was a member of a duly certified friendly society, he was also paid secretary to the society. His duty, amongst other things, was to keep correct accounts of the receipts and expenditure of the society, to receive the moneys weekly from members, and to pay what was due from the society, and weekly to place the balance in the society's box, which was left in the lodge room. He appropriated to his own use certain sums paid in by members, and omitted to enter them as received in the society's books.

Held that he might be convicted of embezzling the money.

CASE 131.

CROWN CASES RESERVED. 1893. *Dec.* 16*th.*

THE QUEEN *v.* TANKARD.

Criminal Law — Embezzlement — Illegal Association — Property—Beneficial Owners—31 & 32 *Vic.*, *cap.* 116, *sec.* 1 *—Companies Act*, 1862 (25 & 26 *Vic.*, *cap.* 89), *sec.* 4.

The defendant was convicted on an indictment, drawn under 31 & 32 Vic., c. 116, s. 1, and charging him with having, whilst one of a number of beneficial owners, consisting of himself, J., and others, embezzled money belonging to such beneficial owners. It was proved at the trial prisoner was the treasurer and a member of a trading club, which was an unregistered association of more than twenty persons, such as is prohibited from being formed by section 4 of the Companies Act, 1862, and that he received money belonging to the association, and failed to pay over or account for it.

Held that the prisoner was properly convicted.

CASE 132.

CROWN CASES RESERVED. 1869. *Jan.* 23.

THE QUEEN *v.* TYREE.

Embezzlement—"Clerk or Servant"—Treasurer of Friendly Society—24 & 25 Vic., cap. 96, *sec.* 68.

A. was treasurer of a friendly society, whose rules directed that all moneys of the society should be paid to the treasurer, and that he should make no payments except on an order signed by the secretary, and countersigned by the chairman, or a trustee, and that he should give security. By another rule, all the moneys of the society were vested in trustees. A. was a member of the society, but received no payment for filling the office of treasurer.

Held, on an indictment against A., as clerk and servant of the trustees of the society, for embezzling money which he had received as treasurer, that A. was not the "clerk or servant" of the trustees within section 68 of 24 & 25 Vic., c. 96.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic. cap.* 25, *secs.* 84-90.

CASE 133.

IRELAND. COURT OF CRIMINAL APPEAL. 1850. *Feb.* 15.

REGINA *v.* MURPHY.

Embezzlement—Friendly Society.

In an indictment against a clerk stating that he being then and there employed as clerk to A. B. and others, did by virtue of his said employment then and there, and whilst he was so employed as aforesaid, receive and take into his possession certain money—to wit, £29 15s. 8d.—for and on account of the said A. B. and others, his masters, and said money then and there fraudulently did embezzle, averring the said money to be the property of the said A. B. and others, his masters, from the said A. B. and others feloniously did steal, etc., etc.

The second count stating the person to be employed as clerk to A.B. and others, etc.

Held first, that it was sufficient to warrant a conviction for embezzlement to prove that the prisoner was employed as secretary of a friendly society, and had not duly accounted according to the rules of the society, and that having taken upon himself to collect moneys he was answerable as a servant for embezzling such moneys.

Secondly, that although the prisoner was himself a member of the society, by the rules all the property of the society being vested in trustees, he was guilty of embezzling a portion of the funds, and the property was rightly laid in the indictment as the property of the employers.

Thirdly, it was not material whether the prisoner received payment for the discharge of the duties he undertook or not, because being the servant of the society he was answerable for the due discharge of any office he undertook to perform.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *secs.* 84-90.

CASE 134.

1842.
SPRING ASSIZES.
Before
LORD ABINGER.

REGINA *v.* MILLER.

It is embezzlement in the clerk of a friendly society fraudulently to withhold the rents of a house collected in the course of his duty as clerk, and he may be laid to be the clerk or servant of the trustees to whom the house was conveyed if appointed either by them or the society.

It is no defence that the business of the society has not been conducted according to the statute.

CASE 135.

Before
THE LORDS JUSTICES.
1855. *May* 24.

YEATES *v.* ROBERTS.

Friendly Society—Withholding moneys of—Liability to deliver up.

A District Oddfellows Society, after expelling a lodge of the society for non-payment of subscriptions and fines, was registered as a friendly society pursuant to 13 & 14 Vic., c. 115, under a name which, upon an objection of the certifying barrister, was altered from the original name. Some deposit notes of a bankers, with whom a portion of the subscriptions were deposited, remained in the hands of the Grand Master of the expelled lodge, and were demanded from him by the trustees of the registered society.

Held that whether the expulsion of the lodge had been proper or not he was bound to deliver up the notes to the trustees, and he was ordered to pay the costs of a suit instituted by the trustees against him for their recovery.

KNARESBRO' COUNTY COURT. 1884. *Jan.* 16. *Before* E. R. TURNER, ESQ.

CASE 136.

TINSLEY *v.* FARMERS' GLORY LODGE OF ODDFELLOWS.

Friendly Society—Claim for Funeral Money—Expelled Member—Rules—Decision of Summoned Meeting—Neglect to Appeal to Arbitrators—Case Dismissed.

George Tinsley, horse breaker, Knaresbro', on behalf of the sister and family of the late James Tinsley, innkeeper, formerly of Knaresbro', sued the trustees, secretary, and treasurer of the Farmers' Glory Lodge of Oddfellows, held at Staveley, for £13 12s. 10d., being amount of sick pay and funeral allowance alleged to be due to the plaintiffs. Mr. Bateson represented the plaintiffs, and Mr. Byron the defendants. Mr. Bateson, in opening, said the deceased, James Tinsley, was a member of the Farmers' Glory Lodge, and died on the 8th November, 1884. On the following Monday his friends applied for his funeral allowance, but the lodge declined to pay anything. From time to time deceased's brother had interviews with the defendants, but they still refused to pay anything, alleging that sometime before his death he had been expelled, and that he had accelerated his death by moving about from town to town without permission of the lodge. A special summoned meeting of the lodge was held, when it was resolved that the claim could not be entertained as the deceased had been expelled some time before his death. At this stage of the case his Honour said that the plaintiff had no case. Deceased had been expelled once, and they should have asked that the question of expulsion should be reconsidered. If the lodge had then refused to reconsider the matter, and no decision was come to within forty days, then they might come to the County Court; but until the rules of the Order had been complied with he had no jurisdiction, and dismissed the case with costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 137.

CROYDON COUNTY COURT. 1890. *Feb.* 18*th*. *Before* JUDGE LUSHINGTON.

TANNER *v.* SURREY LODGE, M.U.I.O.O.F.

Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap.* 60), *sec.* 22—*Dispute—Expelled Member—Rules—Claim to be re-instated—Arbitration—Judgment for Defendants.*

In this case the plaintiff, a bootmaker, of Mitcham, was for some three-and-twenty years a member of Lodge No. 841 of the defendants' society, but rather more than three years since he was expelled the society for alleged misconduct in regard to sick benefits, the action of the defendants, from his point of view, being illegal. For considerably more than two years past plaintiff has in one form or another been seeking redress on the grounds that his case had never been justly dealt with by

the society, and that he had never been fairly heard in his own defence. In the present instance plaintiff brought an action to compel the defendant society to again receive him into membership, and to obtain his right to the privileges of the society. Defendants set up a preliminary objection to the jurisdiction of the court on the ground that the matter had been fully dealt with by the court of the Order, in which case—under the rules to which the plaintiff had himself subscribed—there was no right of appeal to a court of law. On the last occasion the case was adjourned for plaintiff to show cause as to the jurisdiction of the court.

Mr. Hood, who appeared for the plaintiff, now stated that the latter claimed the jurisdiction of the court on the grounds that the society had not complied with their rules in regard to their connection with the case, and that there had been an unjust arbitration in the matter in the court of the Order. The society, as a matter of fact, alleged that plaintiff was working, and able to work, while in receipt of sick pay, and they had refused to hear the man's own witnesses in refutation of the allegations made against him, while he had never been able to hear definite particulars of the charges made against him. In this respect the rules of the society had not been complied with; consequently the case came before his Honour under a decision of Lord Justice Denman's, which he pointed out. At the same time he admitted that had the society complied with the rules in their conduct of the matter, the court would have had no jurisdiction, but in virtue of the decision alluded to, he submitted that his Honour had jurisdiction.

The judge: I should be very reluctant to try the case here.

Plaintiff, sworn at the request of the judge, stated that in the month of August last the lodge refused to take his subscriptions, and gave him to understand that he would be expelled the society. He had previously been on sick pay at the rate of 12s. a week for some eight months. In consequence of the treatment he had received he had, some time before his expulsion, placarded his van with bills relative to his case, and on May 1st last year he received a notice—which he declined to comply with—ordering him to remove all bills concerning the society from his van and elsewhere. Even at that period the dispute was a long-standing one, and on the first occasion of the matter coming before his Honour witness was non suited on the ground that he had not exhausted the rules of the society. Since then he had been to Manchester, but could get no redress from the directors of the Order, and to recover his rights he had circulated a pamphlet bearing on his case, and issued a number of bills, etc. Subsequent to the receipt of the notice regarding the placards and the pamphlet, he was accused of having circulated a false report concerning the society, and of having been seen at work whilst in receipt of sick pay, and eventually he was fined and expelled the society. After attending the lodge, at a meeting of which he refused to remove the offending placards, he was requested to attend a special meeting of the lodge, at which somebody made a proposal that he should be fined £5 for refusing to move the placards. The chairman of the meeting further alleged that he had stood at the foot of his garden and seen witness washing clothes with a "dolly," which he denied, asserting that he had never had a "dolly" in the house. Other charges were then brought against him, and although he had stated that he had witnesses who could disprove the allegations, he was not

allowed to bring them forward. In consequence of the action of that meeting he had been deprived of his sick pay. His subscriptions had been refused by the lodge, and the decision of the latter had been upheld by the district meeting, who made it a *sine quâ non* that before he could resume membership he must pay the £5 fine, which he declined to do, as he considered he was innocent of the charges made against him. He then appealed to the directors for a re-hearing before them, but they replied to the effect that he must give a good reason for such a course, and he had not been able to satisfy them in this respect.

The judge: Is that your case?

Mr. Hood: Yes, your Honour.

The judge: Then there never was any real case to come before me.

Mr. Hood expressed his regret.

The judge remarked that the case was evidently a dispute between plaintiff and his lodge, and as the matter had been before him so many times the plaintiff's solicitor ought really to have gone carefully through all the documents and laid them before the court in a sufficiently regular manner, whereas they had been for months dodging backwards and forwards.

Mr. Hood submitted that as the charges made against the plaintiff were untrue, according to plaintiff's evidence, the lodge had acted from mere caprice.

The judge remarked that he could see no legal obligation on the part of the society to re-hear the case, and he was quite aware that there was a sweeping provision of the Act in reference to the decision of the directors being generally final and beyond appeal. Under the circumstances he found for the defendants, although, of course, if Mr. Hood chose to go to the High Court for a mandamus he would re-hear the case should the other court so direct.

The action was struck out.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 138.

RYAN *v.* CARDIFF HIBERNIAN BENEFIT SOCIETY.

CARDIFF POLICE COURT. 1881. *Oct.* 19.

Friendly Society—Expulsion of Member—Claim for Sick Pay and to be reinstated—Working while in receipt of benefit—Claimant's case failed.

At the Cardiff police court on Wednesday, 19th October, 1881, before Mr. R. O. Jones, David Ryan claimed £7 7s. sick pay from, and to be reinstated a member of, the Cardiff Hibernian Benefit Society. Mr. Vachell appeared for the claimant, and Mr. Clifton, of Bristol, for the defendant. Mr. Vachell said that this was an action brought under the Friendly Societies Act, 38 & 39 Vic., c. 60, and it might shortly be stated that Ryan claimed relief because he alleged that he had been

improperly excluded from being a member of the society, of which he was treasurer. Ryan was one of the oldest members of the society. He became a member in the year 1852, and from that time until May, 1881, although he had continued a member all the time, and had paid all his subscriptions, he had never once made a call upon the society during those 27 years. He had occupied the highest positions in the society—he had been president, he had been trustee 11 years, and he had been a committee-man for six years. It appeared that in May last an abscess formed upon one of Ryan's fingers. Ryan was a timber dealer, and he required both of his hands. He obtained a certificate from the doctor of the society, Dr. Vachell, that in consequence of the abscess on his finger he was unable to follow his employment. There were about 400 members of the society, and he supposed that some of them were not on good terms with the others. On the 12th of May it was alleged by one of the members of the society that he saw Ryan, who was at that time receiving sick pay from the society, take a rule out of his pocket and measure a piece of timber. The person who said he saw him doing this stated that he would report him to the society. There was a rule of the society to this effect, that "if any member, whilst receiving sick pay, be found working, he shall be excluded;" and because Ryan was alleged to have measured a piece of timber with a rule, he was excluded from a society to which he had paid about £127, and on which he had never before made a claim. Mr. Vachell then went on to contend that the committee had no power to exclude any member, and that this could only be done by the members of the society in general meeting.—The stipendiary held, however, that if a member were shown to have worked when in the receipt of sick relief, he would be *ipso facto* excluded.—Mr. Vachell, therefore, abandoned this point, and called his client, who denied having done any work of any kind during the time he was in receipt of sick pay. He admitted, however, in cross-examination by Mr. Clifton, that he was very frequently in attendance at his yard, and a second witness said, that on one occasion claimant asked him to give a man a shilling's worth of firewood, as he was not allowed to work himself.—The stipendiary held that the latter admission was fatal, as it clearly proved that the claimant continued to take an active interest in his business, and the case then collapsed.—Mr. R. O. Jones expressed the hope that the society would reinstate the claimant on his repayment of the amounts he had received in sick relief. It would, he said, be rather hard if he were permanently excluded. Mr. Vachell said that one object of the case was to obtain such an expression of opinion from the Bench, and Mr. Clifton said he should advise the society to reconsider the matter.

CASE 139.

COURT OF COMMON PLEAS. 1858. *June* 9.

IN THE MATTER OF AN ACTION OR SUIT PENDING IN THE COUNTY COURT OF LANCASHIRE, HOLDEN AT LIVERPOOL, BETWEEN GEORGE HOEY AND OTHERS AND JOHN M'FARLANE AND OTHERS.

Friendly Society—Disputes.

The County Court has, by the 18 & 19 Vic., c. 63, ss. 40, 41, 42, jurisdiction to determine a dispute between the committee of management of a friendly society and any of its members, as to the propriety of

the mode of convening and the manner and place of holding special general meetings for the purpose of altering or amending the rules of the society.

A plaint was heard before a deputy judge of a County Court, and he, after the death of the judge whose deputy he was, sent a written statement of his decision to the late judge's successor, who received and entered it as his judgment. The court (without expressly deciding that the judgment so entered was void) granted a rule *nisi* for a prohibition against proceeding upon it, in order to give the parties an opportunity of applying to the new judge for a re-hearing.

CASE 140.

HIGH COURT OF JUSTICE. QUEEN'S BENCH DIVISION. 1896. *July.*

FISHER *v.* BRAILSFORD.

Friendly Society—Expulsion of Lodge—Position of Expelled Lodge Members—Rules.

This was an appeal from the decision of the County Court Judge at Nottingham, and raised a question of some importance to members of the Order of Oddfellows. Mr. Stevenson appeared for the defendants in support of the appeal, while Mr. Etherington Smith opposed it on behalf of the plaintiff.

The plaintiff was a member of the Chesterfield Lodge of the United Order of Oddfellows, and in 1894 the lodge was excluded from membership of the Order. The Order was composed of various branches or lodges, which had their own individual sick funds, and there was also a general funeral fund to which the lodges might subscribe. In 1893, a rule was made by the Order that all lodges should be registered; but the Chesterfield Lodge declined to register themselves, and the lodge was excluded from the Order. Plaintiff's wife died, and he brought an action against the trustees of the society to recover the amount to which he said he was entitled out of the funeral fund. The defendants now contended that, as plaintiff was a member of the lodge which had been excluded from the Order, he ceased to be a member of the Order, and, therefore, was not entitled to any benefit. For the plaintiff it was argued that he was duly admitted a member of the funeral fund, which was a friendly society distinct from the Order, and that there was nothing to prevent him continuing a member of that society, although his lodge was excluded from the Order.

Mr. Justice Cave, in delivering judgment, said immediate y a lodge was excluded from the Order all the members of that lodge were excluded from the Order. The result was that they were no longer members of the Order, and came within the terms of the rule which provided that no one should be entitled to any benefit from the funeral fund if he ceased to be a member of the Order. The plaintiff, having ceased to be a member of the Order, lost his claim on the funeral fund, and, therefore, the appeal would be allowed, and judgment entered for the defendants.

Mr. Justice Wright concurred.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 21.

CASE 141.

HIGH COURT OF JUSTICE, QUEEN'S BENCH DIVISION. 1885. *June* 18. *Before* FIELD, J., AND MANISTY, J.

KNIGHT *v.* WHITMORE.

Trades Union Act, 1871—*Fraudulent misapplication of money by Officer of Society—Summary conviction and punishment of Officer—Civil action for money so misapplied—Extinguishment of debt by punishment*—34 & 35 *Vic., cap.* 31, *sec.* 12.

The treasurer of a local branch of a trades union fraudulently misapplied certain moneys belonging to his society and was summarily proceeded against and ordered to pay the amount claimed and five pounds by way of penalty. He made default in payment of the two sums and was sentenced to two months imprisonment with hard labour. He was afterwards proceeded against by the general secretary of the Union in the County Court for the amount originally claimed, but the County Court Judge nonsuited the plaintiff on the ground that he was not entitled to maintain the action. The plaintiff moved to set aside the nonsuit.

Held on the motion to set aside the nonsuit, that as the plaintiff had had recourse to the remedy provided by section 12 of 34 & 35 Vic., c. 31, and the defendant had been punished, the punishment suffered by him operated as an extinguishment of the debt.

This was a motion for a rule to set aside a nonsuit entered by the County Court Judge of Lancashire, holden at Manchester, under the following circumstances :—

The defendant was Treasurer of No. 1 Branch of the United Society of Boiler Makers and Iron Shipbuilders, duly registered under the Trades Union Act, 1871.

In that capacity he received moneys on behalf of the society. On June 5th, 1884, he had in his hands the sum of £24 15s. 3d. the moneys of the society. On that day he was summarily proceeded against in the Newcastle-upon-Tyne Police Court under 34 & 35 Vic., c. 31, s. 12, and was convicted of unlawfully and fraudulently misapplying the said money, and he was adjudged to forfeit and pay by way of penalty the sum of five pounds and ordered to repay to the prosecutor the said sum of £24 15s. 3d., and in default of payment, according to such adjudication and order, he was adjudged to be imprisoned for two months with hard labour.

The defendant did not pay any of the said moneys mentioned in the conviction or any part thereof, and was sent to prison under the conviction and served his sentence thereunder.

On the 4th May, 1885, the plaintiff, who is the general secretary of the said society, brought his action in the County Court at Manchester, for the said sum of £24 15s. 3d. which he alleged the defendant still wrongfully retained in his hands.

At the trial the learned County Court Judge doubted, having regard to the above facts whether the plaintiff was entitled to recover; and by consent a nonsuit was entered, with leave to the plaintiff to move to set it aside and enter a verdict for the plaintiff for the said sum if the court were of opinion that he was entitled to maintain the action.

Mr. F. Marshall for the plaintiff: I move for a rule *nisi* to set aside the nonsuit and to enter judgment for the plaintiff for the amount claimed in the action. I submit that the nonsuit was wrongly entered and that the plaintiff had a good cause of action.

It is true that he proceeded against the defendant under section 12 of the Trades Union Act, 1871, but that section really only provides a method of bringing summarily to justice a person who comes within its provisions; it is a criminal remedy, for if a person is summarily convicted under it he cannot afterwards be indicted for the same offence. But it cannot be supposed that if a defendant makes default in the payment of the sums he has misappropriated and suffers some short term of imprisonment, he thereby becomes free from his civil liability to make good the amounts which he owes as a debt. If he had been proceeded against by indictment in the first instance and convicted and punished, the plaintiff's civil remedy would not have gone.

Field, J.: This nonsuit was rightly entered by the County Court Judge, and the plaintiff was not entitled to maintain his action. He elected to have recourse to the remedy provided by section 12 of the Trades Union Act, 1871. The claim of the society against the defendant was satisfied by his conviction by the court, and the punishment suffered by him in consequence of that conviction. Indeed I think that if a prosecutor, after having recourse to the criminal procedure, was enabled to proceed against a defendant for a civil debt, it would lead to oppression. This rule must be refused.

Manisty, J.: I concur.

Rule refused.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic. cap.* 25, *sec.* 87.

CASE 142.

CARMARTHENSHIRE QUARTER SESSIONS. 1882. *October* 20.

REGINA *v.* RICHARDS.

Friendly Society—Fraud by Secretary—Conviction.

The Carmarthenshire Quarter Sessions was held at Carmarthen on Friday, 20th October, 1882, before Sir Hardinge S. Giffard, Q.C., M.P., chairman, and other justices, when the case of the Trustees of the Loyal Princess Alexandra Lodge of Oddfellows, Llanelly, against John Richards, of Mount Pleasant, Llanelly, the late secretary, was tried. This case was heard before the Llanelly Bench of Magistrates some two months ago, when prisoner was committed to the Quarter Sessions on the charge of having obtained by false pretences several sums of money belonging to the lodge. Mr. Bowen Rowlands, Q.C., and Mr. H. Terrell, instructed by Messrs. Rees, Edwards, and Wood, appeared for the prosecution, and Mr. Abel Thomas, instructed by Mr. David Randell,

appeared for the prisoner. The case for the prosecution was that the prisoner had, by falsely pretending that a member of the name of Thos. Thomas was ill, and therefore entitled to sick allowance, obtained from the treasurer of the lodge, Mr. Samuel Cratchley, seven sums of 10s. each, when, in fact, a member named Thos. Thomas was not sick at the time, and therefore not entitled to any sick allowance from the funds of the lodge, and that prisoner, well knowing the same to be false, had contrived to obtain the said sums from the treasurer, and had appropriated them to his own use. Two of the trustees of the lodge were called and examined, as were also the secretary and treasurer, together with three persons of the name of Thomas Thomas, who were the only members of the lodge of that name, who distinctly swore that neither of them had been ill during the time named, and had not received any sick allowance from the lodge. Mr. Thomas cross-examined each of these witnesses on behalf of the prisoner, but without in any way affecting their testimony. Mr. Rowlands then addressed the jury, in a short but clear speech, on behalf of the prosecution, after which Mr. Thomas appealed to the jury at some length on behalf of the prisoner, alleging that the matter was more of a mistake than a fraud, and that the fraud had not been sufficiently proved, and left a doubt as to whether or not prisoner had actually received the money, which doubt the prisoner was entitled to the benefit of. The chairman then summed up the whole case, pointing out to the jury the various requirements of the rules of the lodge, and the mode resorted to by the prisoner in infringing those rules, which were as well, if not better, known to him than any other member of the lodge. It fact, it appeared to him (the learned chairman) that prisoner had the whole management of the society. It could hardly therefore be suggested that prisoner had committed these offences by mistake, and even if it were possible to do so once, it could hardly be a mistake to deliberately do the same thing six times more. The jury were then asked to consider their verdict, and if they found that prisoner had received the said sums of money, and that by falsely pretending that members of the lodge were ill when they were not, then they should return a verdict of guilty. If, however, they found that prisoner had not received the money, or even if they had any doubt about it, then they should bring him in not guilty. After a short consultation with one another, the jury returned a verdict of guilty, and the prisoner was sentenced to six calendar months imprisonment with hard labour.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *secs.* 84-90.

IPSWICH BOROUGH SESSIONS. 1883. *April* 5. *Before* T. C. BLOFELD, ESQ.

CASE 143.

REGINA *v.* ROBSON.

Friendly Society—Fraudulently obtaining travelling relief—Conviction.

William Robson (65), shoemaker, was charged with unlawfully and knowingly, by a certain false pretence, obtaining from Joseph Doole, an officer of the Independent Order of Oddfellows, Manchester Unity, 1s.

in money, on the 21st of December, 1882.—Mr. Simms Reeve (instructed by Mr. John Mills) appeared for the prosecutor, and stated that the reason so much trouble was taken to prosecute a man for obtaining so small a sum as 1s. by false pretences was on account of the fraud which it practised upon a well-known society, the Independent Order of Oddfellows, Manchester Unity, and which frauds tended to obstruct the proper relief which that society wished to give to its members.—Joseph Doole, bootmaker, Norwich Road, examining officer of the Ipswich District of Oddfellows, said there was a benevolent fund of the society which he, as examining officer, had to distribute. If a travelling member of the society from another district wanted assistance, he could look in the register of his membership book, and find where to go to for that assistance. The membership book produced, and which was found on the prisoner, contained that information. On the day in question the prisoner called upon Mr. Doole, gave his name as W. Robson, a member of the Lord Collingwood Lodge, Bury, Lancashire. He said he was in distress, gave the password, and produced the book. In consequence of his representation, Mr. Doole gave him the 1s. Witness had no power to give even an Oddfellow money from the fund unless he was in distress. Cross-examined by the prisoner: You did say you were in great distress. I do not say you are not an Oddfellow, but you are not a member of the Lord Collingwood Lodge. Prisoner said he had been a paying member of the Order for 48 years. Witness, in answer to Mr. Reeve, said a member might be turned out of the Order if he committed a felony. The travelling password was sent round to the different officers by figures, and then given to the lodges. An old member of the society might acquire the password in different ways.—Mr. Cooper, sadler, Bury, Lancashire, said he had been for 29 years secretary to the Lord Collingwood Lodge. He had made a careful search of the books, and he could find no such names as William Robson or John Williams members of the lodge. The prisoner was an entire stranger, and had never been a member of that lodge under any name.—Policeman Porter said on Saturday, 3rd March, he charged the prisoner at the station, and in reply Robson, who also gave the name of John Williams, said, "I understand it." He also said his name was not Robson, and that the reason he did not give his proper address was because of his wife and family, and he was afraid of getting into trouble with the parish authorities. Upon the prisoner was found the book produced, and the Post Office Savings Bank book produced, and the latter contained receipts for nine sums of 10s. each, paid in between November and March. There was also found upon him a pedlar's license, issued in Cheshire, to the prisoner, under the name of John Williams, of Runcorn.—At the request of the prisoner Mr. Doole was recalled, and asked whether prisoner was not an Oddfellow. Mr. Doole said he could not say, but he did not think he was.—Prisoner: Can you certify I am not?—Mr. Doole: No.—Prisoner: Then I cannot be convicted without positive proof.—Prisoner, who evidently well understood the routine of the court, proceeded to address the jury, observing that at any rate there was a doubt—a very grave doubt—in the case.—The learned Recorder, addressing the jury, said the case was rather an unusual one. Prisoner obtained the money on the grounds that he was a member of the Lord Collingwood Lodge, and that he was in great distress. The prosecution had proved he was not such a member, and that he was not in distress, and although the prisoner asserted that he was an Oddfellow, he had not told anyone the name of the lodge to which he belonged. But even if he was an Oddfellow he was not, as he

represented himself to be, in distress, because he had, between November and March, paid in various instalments of 10s. each in the Post Office Savings Bank, having a sum of £2 10s. to his credit there, after allowing for £2 he had drawn out.—The jury returned a verdict of guilty.—Mr. Simms Reeve pointed out that there was another charge against the prisoner of a similar character, but the prosecution did not offer any evidence. The prisoner, he might add, had been carrying on similar frauds in various places, and amongst others he had obtained 2s. from the Britons' Pride Lodge, Ipswich, 3s. 6d. from Grundisburgh, 7s. 4d. from Woodbridge, 2s. 3d. from Ipswich Golden Reapers, 2s. from Framlingham, 2s. from Lowestoft, 3s. from Hadleigh, 5s. 11d. from Harwich, and money from lodges in Yarmouth.—The Recorder: Within what period?—Mr. Simms Reeve said it was all done in December, January, and February. Not only did he get these sums from the lodges, but being a very smooth-tongued man, he represented his distress as so extreme that many individual members took compassion on him and assisted him with gifts of money.—The learned Recorder referred to the serious results such frauds might have upon excellent institutions like that of the Oddfellows, diverting the fountain of charity into streams not intended. As, however, nothing further was known against the prisoner, he would be dealt with leniently, the sentence of the court being one month's imprisonment.

N.B.—See Friendly Societies Act, 1896, 59 & 60, *Vic.*, *cap.* 25, *secs.* 84-90.

CASE 144.

MORNING STAR LODGE, M.U.I.O.O.F. (LEEDS DISTRICT) *v.* HEWITT.

LEEDS BOROUGH BENCH.

Friendly Society—Withholding Funds of—Illegal—Conviction.

William Hewitt, mechanic, Spa Street, Leeds, was summoned before the Leeds Borough Bench—Messrs. Bond and Lawson—on the 5th September last, charged with unlawfully withholding £9 14s. 7d. which he had in his possession, which was money belonging to the Loyal Morning Star Lodge, Leeds District, of the Manchester Unity of Oddfellows.—Mr. Dalton, who appeared in support of the summons, said the defendant had been an office-bearer in the lodge, and was known as the N.G., or Noble Grand, his duty being to pay sick money to sick members, and on the expiration of his term of office he had to account for all moneys paid. For the purpose of his office he received from the treasurer of his lodge certain sums amounting altogether to £100 3s. 6d., and the charge against him was that of that sum he had only paid away £90 odd, leaving the amount claimed to be accounted for.—Officials of the society were called to speak to these facts.—The Bench said the defendant was liable to a penalty of £20, but as the prosecution only required the rendering up of the money withheld, the Bench inflicted a penalty of 1s., and ordered the payment of £9 14s. 7d., with the alternative of three months imprisonment.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 87.

CASE 145.

SALFORD BOROUGH COURT. 1879. *Dec.* 11.

TOMPKINS *v.* KILGOUR.

Friendly Society—Neglect to make return of—Conviction.

Robert Kilgour, secretary of the Waterloo Lodge of the Independent Order of Oddfellows, M.U., held at the Duke of Lancaster public house, East Market Street, was summoned at the Salford Borough Court, on December 11th, 1879, under the Friendly Societies Act for neglecting to make the annual return of the funds and effects of the lodge to the Registrar.—Mr. Henry Tompkins, chief clerk in the Registry of Friendly Societies, Secretary's Office, appeared in support of the summons, and stated that for many years past the defendant had neglected to make the required returns, although the necessary forms had been supplied for that purpose.—The defendant said that two copies of the ordinary returns had been made out and forwarded to the district secretary of the Order, on the understanding that he would forward one copy to the Registrar-General.—The magistrates thought a small fine would meet the case, and ordered the defendant to pay 10s. and costs.—James M'Guire, secretary of the Bud of Clarence Lodge of the same Order, held at the Crown and Anchor, Bury Street, was also fined 10s. and costs for a similar offence.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *secs.* 27-28.

CASE 146.

STROUD COUNTY COURT. 1879. *July* 23.

TAYSUM *v.* TAYLOE.

Friendly Society—Withholding property of—Illegality of—Delivery up and payment of costs.

Mr. Jackson appeared for the plaintiff, and Mr E. Smith for the defendant.

Mr. Jackson said the plaintiff in the case was the secretary of the Excelsior Lodge, Independent Order of Oddfellows, who sought to recover certain articles belonging to the lodge in the possession of the defendant. It appeared that the meetings of the lodge were formerly held at the defendant's public house, called the Red Lion, at Chalford. The meetings were held there for some years at that place, and the rent was paid every year, and he believed there was nothing due now, but recently the lodge thought proper to remove their place of meeting to some other place, and they now wished to have their property, which was in a room belonging to the defendant. There was no rent due, and yet, notwithstanding repeated applications, the defendant refused to give up the property to the lodge. His Honour would therefore see that the lodge was put to considerable inconvenience by the defendant withholding the property. On the 9th June he was instructed to write the defendant the following letter: "Sir, I am instructed to apply to you for delivery up of certain articles held by you belonging to the society, and unless the same be delivered on or before Saturday next, I

will take proceedings against you under the Friendly Societies Act." The case had been standing over for several weeks between Mr. Smith and himself, thinking that he would be able to come to some arrangement. He was sorry that he was bound to pay the hearing fee. The action was to recover goods value £10, and £8 damages. In answer to the letter he sent, on the 12th April, he received the following reply from Messrs. Smith and Stafford: "Mr Taysum has handed us your letter respecting this matter, and he desires us to inform you that he has no wish to retain the things belonging to the Chalford Lodge, providing they make proper application for the property, and pay what is a reasonable claim for the room which they have been in the habit of using, and which they have given no notice to quit." There was nothing further took place, but his Honour would hear from the witnesses that the goods were applied for after the receipt of that letter, and they were still refused. On the 30th of April he received another letter from Messrs. Smith and Stafford, stating, "We are informed by Mr. Tayloe that the articles and paraphernalia belonging to the Oddfellows, in his possession, are now ready for delivery, and if any of the officers will attend, they may be had at any time by making an appointment." After that, application was again made for the goods but they were refused. He called upon Mr. Smith himself, and everything was done to induce the defendant to give up the articles, and he could not understand why he persistently refused to do so. He met the defendant in the street along with one of the officers of the lodge (Mr. Antill), when he advised him to give up the articles. That was after all this correspondence had taken place, and he remembered perfectly well the defendant saying to Mr. Antill, "Well, you come along with me, and I will deliver up the things:" but when application was again made he still refused. A summons was issued on the 9th of May, and on the 15th he received the following letter from the defendant's solicitors: "Our client has to-day tendered to Mr. Taysum the boxes and contents claimed, and he says he is surprised at the course your client thought fit to take after our letter informing him that he was willing to give up possession of the said boxes to Mr. Taysum, who was the proper person to receive them." He had no idea till he came into court that morning that the case was going to be called, and he at once forwarded a telegram to his client to attend. His Honour would hear from the witnesses that it was not till a summons was issued that the goods were handed over.

Wm. Taysum said he had been secretary for the Oddfellows society at Chalford for some time, and they formerly held their lodge meetings at a public house kept by the defendant. They paid 30s. a year for house room, which was paid yearly, and up till the time they occupied it.

The judge: There is nothing said about anything being due.

Witness, continuing, said he made a claim for the delivery of the things belonging to the lodge, such as scarves, books, and dispensation cards. They could not hold their meetings without them for two months till they were delivered up. The articles were applied for three times, and he went once himself, but on each occasion the defendant refused to give them up. When he applied for them, the defendant told him he had put it in Mr. Smith's hands, and had nothing at all to do with it. He did not remember the day, but it was some day in April. The defendant knew the secretary and two officers of the lodge went after he called. After the summons was issued the things were tendered

to him, and he sent a telegram to Mr. Jackson asking whether he should accept the same, and upon receipt of an answer he took them in. The defendant told the officers who called——

The judge: You know nothing at all about that.

Mr. Jackson said he was placed at a disadvantage, for he could have brought the officers there that day had he known the case was going to be called.

Cross-examined: It was not usual to give a written note when they wanted their things returned. Mr. Butt and Mr. Griffin were the two officers who called. He called on the defendant about seven o'clock in the evening, after Mr. Jackson had received his letter that the defendant was willing to give up the things, but was met with answer from the defendant that he had nothing to do with it. He showed Mr. Smith's letter to Mr. Jackson stating the goods would be returned after a reasonable claim had been paid, and he called and asked the defendant what his claim was. Before the summons was issued he was not aware that he could receive the things.

The judge: You have not told me what pecuniary damage you have sustained?—Mr. Taysum: We could not hold our meeting for two months, and our members in case of sickness would not be entitled to sick pay.

Mr. Smith: Can you give me one instance where you have sustained actual damage?—There are several members it threw out of compliance.

George William Tayloe, the defendant, was then called, and said he was landlord of the Red Lion public house, Chalford, where the Oddfellows recently held their meetings. He never received any official notice whatever to deliver up the things, and as the Oddfellows always transacted their business in an official way he refused to give them without a written order.

The judge: Whether you received a notice or not you had no business to keep the books.

The defendant: There were no books.

The judge: There were boxes.

Witness, continuing, said he was sworn in not to give up the books to any one except the officers.

The judge: If you are sworn that is illegal.

The defendant: Well, I am under an obligation not to give them up to anyone except officers.

The judge: This is a waste of time. When Mr. Taysum, the secretary, called he says you refused to give them up.

The defendant: After I saw Mr. Smith I never refused to give them up, and had not refused to give them up since, and they could have had the things had they chosen to call for them.

Cross-examined: He was a member of the society, and was present at the meeting when a resolution was passed to discontinue holding their meeting at his house. He considered he was justified in retaining the things without a written order.

The judge: If Mr. Smith consents to pay the costs of the action and the actual expense put to I will refrain from giving judgment; if not I will adjourn the case in order that Mr. Jackson may have an opportunity of bringing witnesses to prove how many applications had been made. Of course we have the defendant's oath about it, but if it is not true he will have the costs of the two days to pay—all expenses and probable damage. I will allow you five minutes to consider over it.

As this was all the list the judge left his seat, and returned in the time specified, when Mr. Smith informed his Honour that he had agreed to his first suggestion—to pay all ordinary costs and actual expenses.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 87.

CASE 147.

RUDD *v.* JAMES.

IN THE COURT OF APPEAL.
1896,
May 18, 19.
June 12, 22.
LINDLEY, L.J.,
LOPES, L.J.,
RIGBY, L.J.

Friendly society — Infant members — Right to dissolve—Consent of Governing Committee—Friendly Societies Act, 1855 (18 & 19 *Vic.*, *cap.* 63), *secs.* 13, 15, *and* 25—*Friendly Societies Act*, 1875 (38 & 39 *Vic.*, *cap.* 60), *secs.* 6, 21 (*sub-sec.* 1), *and* 25.

A friendly society was formed as a juvenile branch of another society under the Friendly Societies Act, 1855, and consisted entirely of infants between the ages of six and eighteen. Rule 3 of the society placed its government in the hands of a committee of management appointed by the parent society.

The members of the juvenile society, being reduced to six in number, signed through their guardians an instrument of dissolution with a view of dividing the assets.

Held that rule 3 was not a mere rule of management, but precluded the members of the society from dissolving without the consent of the committee, which had not been obtained.

Held, also, that the trustees of the society could, under section 21, sub-section 1, of the Friendly Societies Act, 1875, maintain an action for declaring the instrument of dissolution void.

This was an appeal against a judgment dated March 17, 1896, of Kekewich, J., setting aside an instrument of dissolution of a friendly society called the "Juvenile Branch of the Loyal Social Design Lodge, No. 5,006, Independent Order of Oddfellows, Manchester Unity."

The society consisted entirely of members between the ages of six and eighteen, and being reduced in number to six members of about sixteen years of age, they, by their fathers and guardians, signed an instrument of dissolution, dated February 22nd, 1895, with a view to dividing the assets of the society among themselves. The main question was whether they had power to do this.

The action was brought by the trustees of the society against the six infant members to set aside the instrument of dissolution.

The society was established in 1873, under the provisions of the Friendly Societies Act, 1855. The society was formed for infants, but not by infants. It was formed under section 9 of the Act of 1855, by and as a branch of another society called "The Loyal Social Design Lodge," which had been in existence since 1861.

Kekewich, J., set aside the instrument of dissolution on the ground that the infants were incompetent to appoint agents to execute on their behalf.

The defendant appealed.

The case was first argued on May 18th and 19th before the Court of Appeal on the question of the competency of the infant defendants to execute by themselves or their agents the instrument of dissolution, but as the judgment of the court eventually turned upon another point it is unnecessary to report these arguments.

It was also argued that, having regard to section 25, sub-section 6 of the Friendly Societies Act, 1875, the plaintiffs were not competent to maintain this action as persons "interested in or having any claim on the funds of the society." The court subsequently intimated that they wished to hear argument upon the question whether, assuming that all the infants had signed the instrument of dissolution, and had power to sign it in their own names, they could, having regard to the constitution of the society, by an instrument so signed dissolve the society without the consent of the governing committee.

June 12. Mr. Younger for the appellants.

The lodge was formed under the Friendly Societies Act, 1855, and at that time there was no branch. Under secti n 49 of the Act the word "society" in the Act included every branch of a society. The society has never been registered under the Friendly Societies Act of 1875, but the lodge has. It was registered as a branch of the Manchester Unity of Oddfellows, but it was not registered as a society with branches under the provision of section 29 of the Act of 1875.

The society is an independent and separate society of itself, registered under the Act of 1855, having all its members infants, and entitled to take advantage of the provisions of the Act of 1875 relating to such societies. Under section 6 of the Act of 1875, the rules of societies in existence at the date of the passing of the Act were preserved except so far as they were contrary to any express provision of that Act, and under section 15, sub-section 8 (b), a rule of such a society for the admission of members under the age of sixteen was not to be deemed contrary to the provisions of the Act.

Under rule 3 of the society's rules the government was in the hands of the committee, but under rule 21 they could not alter the rules without the consent of the members.

The sections relating to dissolution are section 13 of the Act of 1855, and section 25 of the Act of 1875.

There is nothing in either of them which requires the consent of the governing body to a dissolution; and there is no difference in this respect as regards societies registered under the Act of 1855, between adult and juvenile societies. Under the Acts, the only persons who have a voice in the dissolution are the members and the creditors of the society. The members of the governing body need not be members of the society at all. The question turns upon the section of the Acts, and not upon the society's rules.

[He referred to sections 13 and 27 of the Act of 1855, and section 14, sub-section 1 (g and h); and section 15, sub-sections 3, 4, and 5; and section 25, sub-section 1 (c) and sub-section 7 (b and d) of the Act of 1875, and also to clause 7 in schedule 2 to that Act.]

Mr. Lightwood (Mr. Renshaw, Q.C., with him) for the respondents: Under section 15, sub-section 8, of the Act of 1875, infants are members of a society like this only subject to the rules of the society, and their right to sign a dissolution deed must be qualified by the rules—rules 3 and 21. The governing body must have control over the business of the society, and the constitution of the society could not be altered without their consent. The infants could not by themselves alter the destination of the funds—rules 1 and 22. The juvenile society is closely connected with the adult—rules 3, 5, and 12.

Under section 15, sub-section 8, of the Act of 1875, a minor cannot be a member of the committee of management, or trustee or treasurer of the society, that is, he is not to have any control over its funds. Both the section and the rules show that the intention was that an outside body, the committee, should have the management of these societies. If this dissolution is carried out, the infants will be interfering in the management of the society, and getting control over its funds.

Mr. Younger, in reply: The right to dissolve is conferred by the Act, and it is given to the members. If the rules of the society purport to interfere with that, they are contrary to the Act of 1875, and therefore of no effect. A society such as this cannot, any more than an ordinary company, enter into a contract not to go into voluntary liquidation, or alter its constitution.

Lindley, L. J., read the judgment of the court, which, after stating the facts, proceeded as follows:—The first thing is to ascertain the powers conferred on the members at the time this society was formed. Having done this, the next step will be to ascertain to what extent (if any) those powers have been extended or restricted by what has occurred since the formation of the society.

By section 15 of the Act of 1855, infants could be elected or admitted as members, and the Act did not limit the age below which infants could not be admitted. It is difficult, however, to suppose that the legislature ever contemplated the formation of a society consisting only of children—at least, unless they were put

under some governing body—rules 8 and 15 of this society fixed six and eighteen respectively as the lowest and highest ages for membership. The society therefore, was for the benefit of girls and boys between six and eighteen. It is obvious, however, that such persons could not manage their own affairs, and accordingly the lodge who created the society placed its government in the hands of a committee of eight persons appointed by themselves (rule 3). The power to do this is expressly conferred by section 25 of the Act of 1855. That section expressly empowered the lodge (being the persons intending to establish the society) to do the following things :—First, to make rules for the regulation, government, and management of the society; secondly, to appoint a general committee of management of the society; and, thirdly, to delegate to such committee all or any of the powers given by the Act to the members of the society. Rule 3 must be read by the light thrown upon it by this section, and bearing in mind that the society was for the benefit of children and young persons under eighteen. It must also be borne in mind that, though infants could be members of the society, they could not be directors, trustees, treasurers, or managers of it (section 15 of the Act of 1855). Read by the light thus thrown upon it, rule 3, which says "that this society may be governed by a committee of eight," is, in our opinion, not a mere rule of management proceeding from the members, and which they need not observe longer than they like, but is a rule imposed upon the society by those who established it, and which the members by themselves cannot get rid of. Power to alter the rules is conferred by section 27 of the Act of 1855, which, however, must be read with section 25, and, as regards infants, with section 15. These sections and the declaration to be made under section 27 show that this power of altering rules depends not only on section 27 of the Act, but also on the rules themselves. Rule 21 says that no rule shall be made or altered without the consent of a majority of the members. This rule has not the effect of enabling the members to repeal rule 3, and so emancipate themselves from the government of the committee of management; but it prevents the committee of management from altering the rules without the consent of the members, although the whole government of the society is entrusted to the committee. Rules 2, 6, 13, 14, 17, 18, and 22 (which his lordship did not read), further show the extent to which the powers of the members are subject to those of the committee.

This review of the Act and the rules forces us to the conclusion that rule 3 is the governing rule of this society, and that all the powers conferred by the Act of 1855, or by the rules, upon the members must, whenever possible, be read as controlled by this rule. No other construction is consistent with the obvious intention of those who made the rules and established the society. Persons over eighteen cannot be members of this society, and to suppose that persons under that age could under this Act and rules throw over or get rid of the governing body, and govern the society themselves, is, in our view, ridiculous.

We have dwelt at length on this point because it throws great light on the power to dissolve. This power is not conferred by the rules, but by section 13 of the Act of 1855. This section enables the members of a society governed by it to dissolve, but this again must be read with section 25, and with the rules of the society, and, so reading it, we cannot come to the conclusion that the members of this society can dissolve without the consent of the committee to whom the government

of the society is committed by rule 3. Such a construction is, in our judgment, wholly opposed to the scheme on which the society is based, and to the clearly expressed intentions of those who established it. In our opinion, therefore, it is clear that under the Act of 1855 the members of this society could not have dissolved it without the consent of the committee, and could not themselves have so altered the rules as to obtain power to dissolve the society without such consent.

We pass now to the effect of what has taken place since. The Act of 1855 has been repealed, and been replaced by the Act of 1875, but the rules of existing societies are preserved so far as they are not contrary to any express provision of the Act (see section 6), and the rules of this society, never having been altered, are as binding on its members as before, unless contrary to some express provision of the Act. Unless, therefore, rule 3, which places the members under the control of the committee, is contrary to some such provision, that rule is still a fundamental rule of the society, and one from which the members of the society cannot emancipate themselves. Under the Act of 1875, as under the Act of 1855, minors may be members (see section 15, sub-section 8), and, although the age is raised to sixteen in new societies, the rule of this society which admits members as young as six is preserved (see section 15, sub-section 8, (b).) The Act of 1875 does not extend the power of the members of this society to alter the rules (see section 13), nor does it in our opinion, extend the power to dissolve (see section 25). Section 25 applies to all societies governed by the Act, whether old or new, and whether the members are over or under twenty-one; but, as to old societies, the section must be read with section 6, which lets in their rules, and for the reasons which we have given when examining the Act of 1855, we cannot arrive at the conclusion that the members of this society had power to dissolve the society without the consent of the committee in whom the government of the society is vested.

The Act of 1875 has not altered the constitution of this society.

This view of the Act renders it unnecessary to consider whether, if the infant members had power to dissolve the society by themselves signing an instrument of dissolution, an instrument signed for them by their fathers, guardians, or agents would suffice. The point is not free from difficulty, and we say nothing about it.

It only remains to notice the objection that the trustees of the society are not entitled to maintain this action. The objection is founded upon the language of section 25, sub-section 6 of the Act of 1875, which empowers certain persons only to commence proceedings to set aside a dissolution. But the property of the society is vested in the plaintiffs, and, even if they are not interested in the property in the sense in which those words are used elsewhere in the Act, still there is nothing in the Act to prevent the trustees from taking whatever steps may be necessary to preserve that property from being disposed of contrary to the rules of the society. Indeed, power to do so is expressly conferred upon them by section 21, sub-section 1. The judgment appealed from is right, and the appeal must be dismissed.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *secs.* 36, 78, 82, *and* 94.

CASE 148.

COURT OF QUEEN'S BENCH.

EX PARTE GORDON.

1851. *Nov.* 20.

Friendly Societies—13 & 14 *Vic., cap.* 115, *sec.* 26—*Jurisdiction of Magistrates under—Requisites of conviction.*

Mr. Hawkins moved for a rule *nisi* for a certiorari to bring up a conviction of Mr. Alderman Carrol, made under 13 & 14 Vic., c. 115, s. 26, by which John William Gordon was ordered to pay over to certain persons named therein the sum of £1,014 5s. 6d. The certiorari was taken away, and this rule could not therefore be granted, unless there was entire want of jurisdiction; but there was want of jurisdiction, both as to the facts and upon the face of the conviction itself. First, as to the facts:—In and before 1848, Gordon had been the treasurer of a certain society of Foresters, in that year there was a division in the society, which was in consequence split into two. Gordon remained with the larger division, and continued to act as treasurer to such division. At the time of the division Gordon held, as treasurer to the entire society, a considerable sum of money. He continued to hold this money after the division, and permitted the society, of which he remained a member, to enjoy the proceeds of it; but he considered that he still held it as trustee for the entire society. In December, 1850, the said larger division of the original society was duly registered, and Mr. Alderman Carrol had convicted Mr. Gordon of withholding this money from such registered society, and had ordered him to pay over to certain officers of the society the sum of £1,014 5s. 6d., being double the sum so alleged to have been withheld. It was now submitted that the magistrate acted without jurisdiction, as the money withheld was clearly the money of the original entire society, and not of the divided society. And secondly, that the conviction was bad for want of jurisdiction on the face of it, as it did not show, as required by the 26th section of the Act, that it was made on the complaint of any officer of the society appointed for that purpose, but simply that it was made on the complaint of certain officers of the society.

Per Curiam. On the first point there will be no rule, as the magistrate had jurisdiction over the subject matter and the facts were for his determination. On the other point you may take a rule.

Rule accordingly.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 68.

CASE 149.

PATRICK *v.* GILBERT.

COURT OF QUEEN'S BENCH.

1870. *January* 19.

COCKBURN, C.J., MELLOR, J., LUSH, J.

Friendly Societies—18 & 19 *Vic., cap.* 63, *sec.* 24—*Matters before registration—How affected by the Act after registration.*

An association not registered and without rules held meetings at the house of G., and, appointing him their treasurer, placed money, etc., in his hands. A majority

of the association afterwards removed the meetings from the house of G., whereupon he resigned, but refused to deliver up the money, etc. The association was afterwards registered without the concurrence of G., and proceeded against G. under the 24th section of 18 & 19 Vic., c. 63.

Held that G. was not liable under that Act, as he was not a party to the registration.

This was a case stated pursuant to 20 & 21 Vic., c. 43, by two justices for the borough of Derby.

The following were the facts of the case, as stated by the magistrates:

At the petty sessions for the said borough, holden before us, at the police office, in the said borough, on the 28th day of August, 1869, Arthur Gilbert, of Abby street, in the said borough, beerhouse keeper (hereinafter called the respondent), being summoned, appeared before us to answer the information and complaint of Hugh Patrick (hereinafter called the appellant), the secretary of the Royal Rangemoor Lodge (No. 846) of the Grand United Order of Oddfellows Friendly Society, that the respondent, on the 20th day of June in the present year, and also on, before, and after that day, at the parish of Saint Werburgh, in the borough aforesaid, having in his possession certain moneys of the said society, amounting to the sum of £12 13s. 5d., and also a certain cash book and certain vouchers and printed cards of and belonging to the said society, unlawfully did withhold the said moneys and the said cash book, vouchers, and printed cards from the said society, and had not paid, and did refuse and neglect to pay the said moneys, or any part thereof, and did refuse and neglect to deliver up the said cash book, vouchers, and cards to the said society as required by the rules of the said society, and although such payment and delivery were required by the said society; and also that the said respondent had ever since the day and times aforesaid withheld, and still withheld, such moneys, cash book, vouchers, and cards from the said society, and refused as aforesaid to pay and deliver up the same, contrary to the statute in the case made and provided.

Both parties were represented by their attorneys. The appellant proved that the respondent, as treasurer of the lodge in question, had, up to the 7th day of November, 1868, received moneys of the society to the amount of £12 13s. 5d.; that on the said 7th day of November the lodge (which was theretofore held at the respondent's house) was removed from thence to another public house; that the respondent thereupon tendered his resignation as treasurer, and was called upon by the appellant (the secretary of and on behalf of the lodge) to hand over the moneys, books, vouchers, etc., in his hands as such treasurer; that the respondent objected to do so, and had not up to the present time paid over the money or delivered up the books, etc. It was also proved that the rules of the society were submitted to and certified by the Registrar of Friendly Societies on the 26th day of February, 1869, previous to which date the lodge had no registered or certified rules. It also appeared in evidence that respondent, as treasurer, received no salary nor any compensation for the use of the room in which the lodge used to meet beyond the profit accruing to him upon drink supplied to the members. It was also proved that on the 7th day of November, a

trustee of the society was appointed to receive the subscriptions of the members and had done so ; that from that date the respondent, although his resignation was not accepted, had ceased to receive subscriptions or otherwise to act as treasurer. On the 24th day of April, 1869, he was expelled from the society and he was subsequently again called upon to deliver up the money, books, etc., in his hands. It was stated that certain members of the society had continued to meet at the respondent's house ; and, in fact, the respondent claimed to have held the money, books, etc., as belonging to them, and alleged that he had parted with the same to the officers of the lodge which continued to be held at his (respondent's) house. The respondent's attorney, without further going into any defence objected that the magistrates had no jurisdiction to make the order inasmuch as the society, previous to the 26th day of February, was unregistered. Mr. W. P. Roberts, the appellant's attorney, in reply cited the case of *Ex parte* Gordon, 15 Justice of Peace, 767, which was considered a sufficient answer. The respondent's attorney then contended that the magistrates' jurisdiction was ousted by section 11 of 11 & 12 Vic., c. 43, which enacts

"That in all cases where no time is specially limited for making any complaint in the Act or Acts of Parliament relating to such cases, complaint shall be made within six calendar months from the time when the matter of such complaint arose."

"This objection we held to be fatal, and on that ground dismissed the complaint."

Cockburn, C. J., in giving judgment said : I entertain no doubt that this case was properly dismissed. There may be some doubt as to whether the 11th section of the 11 & 12 Vic., c. 43, would make the six months a limit to the proceeding here, but it is not necessary to decide that now. There was no cause of complaint under the Friendly Societies Act. He was treasurer to a society of persons to which each person had subscribed sums of money. While this society was in existence a schism took place, and he, as treasurer, was called upon to give up these sums of money. He resigned his post as treasurer and refused to give up the money. The majority of the society soon after took advantage of the Act relating to friendly societies and were registered. They then took proceedings under that Act against him. He never was a treasurer under that Act, though, as Mr. Kean says, it is not necessary that he should be to enable them to proceed under the Act. It is enough if he be a member. He never did hold money under that Act, but he held it for a society or association of persons. It was not his duty to hand over to a society under that Act, but to the members of an association. If all parties of that association had formed under the Friendly Societies Act, then he would have been bound in equity to hand over to the society as representing the old association. He never attorned, to use the phrase, to the society under the Act, but held as treasurer under the old association. It would be monstrous to hold him liable under the Friendly Societies Act, as he never was a party to the association becoming registered under it.

Mellor, J. : I do not express any opinion as to the merits in his resistance. It seems clear that misfortunes have befallen them as being without the protection of the Friendly Societies Act. Very probable individuals may have a right to a share in the money in Chancery. All

these matters as to registration are subsequent to the proceedings before the magistrates. They were taken in respect of things received by a society as a friendly society. He only received them in respect of certain members of an association.

Lush, J. : The facts clearly show that he never had the money, books, or papers, as the property of a society under the Act relating to friendly societies, but of individual members of a society. There was nothing to transfer this property from the one to the other.

CASE 150.

VICE CHANCELLOR STUART.

RE BRITON FRIENDLY SOCIETY.

1852. Nov. 20.

Friendly Societies—Powers of the Court of Chancery under the Act 10 Geo. IV., cap. 56, to compel two members of a Friendly Society to restore money belonging to the society which had been received by them.

This was a petition presented by the officers of the Briton Friendly Society, established at Llanegwad, in the county of Carmarthen. The object of the petition was to compel two members of the society, by name Jones and Davies, to restore a sum of money, part of the funds of the society, with which sum they had been entrusted by the other members. From the statements in the petition it appeared that a general meeting of the society had been held early in 1850, whereat it was resolved that the funds of the society should be got in and divided, and that the society should thereupon be dissolved. After the general meeting Jones and Davies were entrusted with part of the money belonging to the society, for the purpose of depositing it in a bank at Carmarthen. The deposit was duly made by them, but they subsequently drew the money out, and notwithstanding frequent applications for the repayment of it, they still retained it in their possession. The petition prayed that Jones and Davies might be ordered to refund the money wrongfully retained in their possession.

Mr. Bevir in support of the petition contended, that although the Friendly Societies Acts of the present reign (3 & 4 Vic., c. 73 ; 9 & 10 Vic., c. 27 ; 13 & 14 Vic., c. 115) did not apply to the present case, inasmuch as the society in question was established before those Acts were passed, yet that the court could make the order asked under the powers of the Act 10 Geo. IV., c. 56, s. 14, which provided that the Court of Exchequer in England (the Equity side of which had been transferred to the Court of Chancery), or the Courts of Great Session in Wales, should in the case of friendly societies enrolled with the Clerk of the Peace for the County wherein such societies should be constituted, according to the form thereby prescribed, have power in a summary manner to order payment of any sum of money belonging to a society which had been received by any of its members, and not repaid after demand made. To come under this clause of the lastly mentioned Act, proof of the enrolment of the rules became necessary. This was done by the production of the book containing the rules of the society, with the signature of the Clerk of the Peace attesting their enrolment at Quarter Sessions.

Stuart, V.C.: How do you prove the signature of the Clerk of the Peace?

Mr. Bevir: The Act 8 & 9 Vic., c. 113, dispenses with the necessity of any proof of that fact.

Mr. Renshaw for the respondents Jones and Davies.

Stuart, V.C., thought that the justice of the case was clear, and that enough had been said upon the construction of the Act to enable him to make the order asked.

Ordered accordingly.

CASE 151.

CROWN CASES RESERVED.
1870.
Jan. 29.

THE QUEEN *v.* STAINER.

Friendly Society—Rules in restraint of trade—Illegality—Embezzlement—Right to the protection of the criminal law.

S., an officer of a friendly society, some of whose rules were in restraint of trade, embezzled their money.

Held that rules in restraint of trade are not "criminal," although they may be void as being against public policy, and that societies having such rules are entitled to the protection of the criminal law for their funds, and, consequently, that S. might properly be convicted of embezzlement.

CASE 152.

IRELAND.
THE VICE CHANCELLOR.
1894.
June 11.
July 9.

INDEPENDENT PROTESTANT LOAN FUND SOCIETY; *EX PARTE* MORTON. FRIENDLY PROTESTANT PARTNERSHIP LOAN FUND COMPANY; *EX PARTE* HALL.

Winding up Companies Act, 1862—*Unregistered Company*—*Friendly Societies Acts*, 18 & 19 *Vic.*, *cap.* 63; 38 & 39 *Vic.*, *cap.* 60—*Industrial and Provident Societies Acts*, 15 & 16 *Vic.*, *cap.* 31; 56 & 57 *Vic.*, *cap.* 39.

The court has jurisdiction, under section 199 of the Companies Act, 1862, to wind up compulsorily, as an unregistered company, a society registered under the Friendly Societies Acts, but not registered under the Companies Act, 1862.

The members of a friendly society who have given notice of withdrawal of deposits are not in the same position as outside creditors, and are not entitled *ex debito justitiæ* to obtain an order for winding up; but where the circumstances, in the opinion of the court, make it just and equitable so to do, the court will order such a society to be wound up.

In each of these cases an application for winding up was made by a member of the society, who had served notice of withdrawal of deposit, and the applications were supported by the respective societies. The petitioners did not seek to obtain any priority over members who had not given notice of withdrawal. The funds of the societies were not sufficient to pay the members in full, but neither society was indebted to outside creditors. The Independent Protestant Loan Fund Society was registered under the Friendly Societies Act, 18 & 19 Vic., c. 63, and on the 19th March, 1894, passed a resolution to wind up voluntarily. The Friendly Protestant Partnership Loan Fund Company was registered under the Industrial and Provident Societies Act, 1852, 15 & 16 Vic., c. 31. Neither society was registered under the Companies Act, 1862.

Mr. S. L. Brown for the petitioner in each case, relied on an affidavit of the liquidator appointed by the Independent Society.

Mr. Gordon, Q.C., and Mr. Philip White, for Mr. Gerald Byrne an outside creditor and others.

The Vice-Chancellor, in the Independent Protestant Loan Fund Society, *ex parte* Morton, gave judgment as follows :—

This society was constituted and registered under the Friendly Societies Act in the year 1855, under the 18 & 19 Vic., c. 63. This Act was repealed by that of 38 & 39 Vic., c. 60, and it is by the latter Act that the society is now regulated. It is not a registered company under the Act of 1862, and can only be wound up under the 199th section of that Act as an unregistered company. Under that section this court has no power of winding up voluntarily, or under supervision, and the petition prays generally for a winding up by the court.

The petitioner claims to be a creditor of the company for a sum of £70, which was deposited by him with the company, and for the withdrawal of which he duly gave notice. The 20th rule provides that any member may withdraw from the society at any time by giving one month's notice in writing to the committee, and he shall thereupon be paid all sums then to his credit in the funds of the society, after making the deductions expressed in the 5th rule. The 5th rule provides that the rate of subscription shall be 2s. 6d. at least per share, and that the sum or sums to any member's credit in the funds of the society shall consist of his weekly payments, and his share of the profits, and accumulations in respect of such profits, deducting so much of any loan to such member as shall be then outstanding and unpaid. It follows that on such withdrawal the member ceases to belong to the society, and the society becomes a debtor to him for the amount due to him upon a settlement of the account provided for by rule 5. This, however, is subject to a qualification that the withdrawal is not made when the society is in an actual state of insolvency. It was contended here that this society was in such a state when the plaintiff gave notice of withdrawal, but a controversy exists as to this as a matter of fact, and also as to this fact being known to, or within the knowledge of the petitioner. There is no outside debt due by the society, except on foot of a claim for a small sum of costs due to a Mr. Byrne, who opposes the making of an order for winding up. There are liabilities to a considerable amount to

members who have funds to their credit in the society for their subscriptions, but these cannot be regarded as debts in the ordinary sense, at least in the cases where no notices of withdrawal have been given.

The position of members who have given notice of withdrawal under a society's rules has been considered in several cases, and the principle has been established that they are not in the same position as outside creditors, and have therefore no right *ex debito justitiæ* to obtain an order for winding up. In *re* Sunderland Building Societies it was held by the Queen's Bench Division that the right of withdrawal under rules similar to those of the society before me ceases to operate when the society is in an actual state of insolvency, though no formal dissolution by winding up order or otherwise has taken place; and that it is not the order to wind up, but the state of things which to the knowledge of all concerned renders liquidation inevitable, that in such a case puts an end to the right to withdraw. That case was decided on a question raised in the course of proceedings in winding up, and after an order was made, and it had reference to the priorities claimed by members who had given notice of withdrawal. Here the petitioner has at the bar by his counsel disclaimed any right to priority over the other members by reason of his notice of withdrawal. I cannot hold that he is a creditor in the ordinary sense, and it has been conclusively established by several cases that he still remains what has been termed "a creditor member," and that he continues bound by the rules of the society. This proposition must include not only the actual rules made by the society but any rules imposed on it by statute. In the case of the Planet Building Society, Lord Romilly, M.R., refused to grant a winding up order under the Act of 1862, section 199, on this ground, but he indicated his opinion that under special circumstances such an order might be made on the application of a person in the position of a withdrawing member. Under that section the court may make the order whenever the court is of opinion that it is just and equitable that such an order should be made. There are strong special circumstances here in favour of such an order. The application is supported by the society, and has been in fact brought forward by the petitioner at the instance of the society. The society owes nothing to outside creditors save the trifling sum I have mentioned. The funds of the society are not sufficient for payment in full of all the sums due to its members. The plaintiff has disclaimed by his counsel at the bar all right to priority over the other members, and expressed his wish that the funds realized shall be divided rateably amongst all the members. At two special meetings of the society duly convened, resolutions were unanimously passed, first, that the society should be wound up voluntarily, and, secondly, that it should be so wound up under the supervision of the court. A liquidator was appointed by them who has been engaged in the getting in of the assets. The objection to winding up voluntary under supervision arising on the provisions of the 199th section do not appear to have occurred to the society till after the petition was presented, but the prayer is large enough to include a compulsory order; that was the order moved for and which was supported by the society. Under these circumstances it appears to me just and equitable to make the only order I can make to carry out the wishes of the society, namely, an order for compulsory winding up.

It was contended that this case was one which ought to be disposed of by an application to the Registrar of Joint Stock Companies. There is

nothing in the rules of the society requiring this course to be taken. It is not a dispute between the society and one of its members, as was the case In *re* Sunderland Building Society. The 22nd section of the Act of 1875 merely provides that every dispute between a member, etc., and the society shall be decided in manner directed by the rules of the society. The only rule on the subject is the 26th, which merely provides that all disputes in the society shall be referred to arbitration by certain arbitrators appointed as therein provided. Here there is no dispute between the petitioner and the society, and as this cannot in any view be deemed a dispute in the society, I shall therefore make an order for the winding up of the society by the court, and shall continue the liquidator appointed by the society, with the usual consequential directions. I shall give the petitioner and the society their costs in the matter.

CASE 153.

BRADFORD COUNTY COURT.
1895. *Feb.* 11.

SCOTT *v.* PEEL.

Friendly Society—Illegal division of funds—Injunction restraining Members from applying moneys of Society contrary to Rules—Account—Secession.

A most interesting and important action to members of friendly societies was heard in the Bradford County Court, on Tuesday, February 11th, 1895, before his Honour Judge Gates, Q.C. The action was one in equity, the plaintiffs being Samuel Scott, Alfred James Dyer, and William Henry Wood, trustees of the Ancient Order of Foresters Friendly Society, whilst the defendants were William Peel and others, the trustees and officers of the Court Concordant Branch of the Ancient Order of Foresters Friendly Society, held at Cleckheaton. Mr. Samuel Ward, solicitor, of Dudley, appeared for the plaintiffs, and the defendants were represented by Mr. Greaves, of Greaves and Harker, Birstall.

Mr. Ward, in opening the case, said that he appeared in the present action for the plaintiffs, who were the trustees of the Ancient Order of Foresters Friendly Society, whilst the defendants were the trustees and other officers of the Court Concordant, a branch of the Ancient Order of Foresters Friendly Society, which was held at the Northgate Hotel, Cleckheaton, and his Honour would better grasp the facts if he read first the particulars delivered in the action.

> "Court Concordant, No. 205, held at the Northgate Hotel, in "Cleckheaton, in the county of York, is a branch of the Ancient "Order of Foresters Friendly Society, and forms, or until recently "formed, part of the Birkenshaw Humane District Branch of such "society, and is duly registered. By the constitution of the said "society (hereinafter called the Order) and of the said Court "Concordant, such court is subject to the general laws of the "Order. The 49th of such general laws, section 1, sub-section *f*, "provides that, 'It shall not be lawful for a court to divide any of "its funds, which shall be devoted solely to carry out the objects of "the society. Any court doing so shall forfeit the money so

" divided to the High Court Relief Fund, to be recovered by legal " process as a penalty. And the court shall also be fined £5, and " 10s. per day until the money is paid into the said fund.' "

On the 18th and 21st August, 1894, on 9th and 27th October, 1894, and on 6th November, 1894, and on divers other dates, Court Concordant and the committee of management of such court passed, or attempted, or purported to pass resolutions to break up the said court, to cease to pay contributions to the Order, and to divide its funds in breach of the aforesaid general law 49, section 1, sub-section *f*. In pursuance or furtherance of such resolutions, certain shares in the Gomersal Gas Light Company (which shares formed part of the funds and property of the said Court Concordant) were sold by auction, and the proceeds of sale deposited at the Cleckheaton Branch of the Huddersfield Banking Company, Limited, in the names of the defendants, Benjamin Umpleby, William Gomersal, and William Plumb. At some date or dates subsequently thereto, the said last-named defendants withdrew the said money from the said bank, and illegally divided, or caused, or allowed the same to be divided amongst themselves and the remaining members of the Court Concordant, contrary to the said general law 49, and in breach of trust. The defendants have also neglected or refused to pay the contributions and fines due or receivable by the High Court of the Order under the aforesaid general laws, and have committed other breaches of trust in relation to the matters aforesaid.

His Honour : Who are the plaintiffs ?

Mr. Ward : The plaintiffs are the Trustees of the High Court of the Ancient Order of Foresters Friendly Society, and the plaintiffs claim that the defendants and the remaining members who are trustees illegally divided the money of that court. Continuing, Mr. Ward said that the plaintiffs claim—(1) A declaration that the defendants and the remaining members of Court Concordant are trustees of the moneys and property (including the money deposited in the said bank and illegally divided as aforesaid) upon the trusts applicable thereto, set forth in the said laws and rules ; (2) execution of the said trusts under the order and direction of this court ; (3) a declaration that the defendants and the remaining members of Court Concordant are liable to pay to the plaintiffs, as trustees of the said Order, the moneys so illegally divided amongst themselves and the remaining members of the said court as aforesaid, and all other moneys appropriated, divided, or devoted, or applied, or received by the defendants contrary to, or in manner inconsistent with, the aforesaid general laws of the Order.

His Honour : In No. 3 you ask to make the defendants and others—the remaining members. Why should the remaining members, who were not parties to it, be included ?

Mr. Ward : But they are parties ; they have received their shares. You will be satisfied of that.

His Honour : Then you ask for a declaration for the defendants and the remaining members. I thought that only those who had been parties to the action would be required ?

Mr. Ward : Certainly, because in the event of it being necessary to bring evidence before you—though it will not now be necessary—I

could prove that they have received their shares. They are parties in fact, because the defendants are sued on behalf of themselves and the remaining members. Continuing, Mr. Ward said: No. 4 required payment of the contributions and fines due or incurred by Court Concordant under the said general laws. (5) An injunction in respect of the following matters:—(*a*) To restrain the defendants and the remaining members of Court Concordant from applying the funds and property of Court Concordant, or any part thereof, for any purposes other than the purposes of a branch of the said Order, and in accordance with the aforesaid laws and rules. (*b*) To restrain the defendants and the remaining members of Court Concordant from withholding from the High Court of the said Order the contributions and fines which such High Court is entitled to receive from Court Concordant, or out of its funds and property; and (*c*) to restrain the defendants and remaining members of Court Concordant from committing any breach of trust. (6) An account. (7) Further and other relief. The defendants, William Peel, Samuel Brown, and William Blamires are sued as the registered trustees of Court Concordant; the defendants, Benjamin Umpleby, William Gomersal, and William Plumb are sued as trustees of such court, whose nominations have not been registered. The defendant, J. Binns, is sued as treasurer, and the defendant, Herbert Archer, as secretary. All the defendants are sued as members, and on behalf of and as representing the remaining members of Court Concordant, and as constructive trustees of the funds and property thereof. Mr. Ward said those were long particulars of claim, but he thought they very clearly set out without much talking from him the facts of the action, the objects of the action, and the rights sought to be enforced in the action.

His Honour: This branch is at Cleckheaton. Is that within the jurisdiction of this court?

Mr. Ward: Yes, it is within your Honour's jurisdiction. Court Concordant is a very old court. It is contemporaneous with the Foresters themselves. It is more than sixty years old, and for more than half a century the court was a very flourishing court. It is registered under the Act of 1855; since then most of the societies have become registered under the Act of 1875 and its amendments. The Act of 1875 provides for the registration of existing courts as branches of the parent Order, and as a rule existing courts availed themselves of that provision of the statute and became converted into registered branches of the Order. But Court Concordant and other courts, although repeatedly advised to take registration under the Act of 1875, failed to do so.

His Honour: What is the consequence of that?

Mr. Ward: The consequence of failure to register as a branch under the Act of 1875 is this—they do not become entitled to certain advantages conferred by the Act of 1875, and they are subjected to certain disabilities relating to fiscal and domestic matters. There are other effects of non-registration under that Act of 1875 which your Honour would have to deal fully with if certain circumstances had not arisen which will make it possible for me to shorten the case and save a great deal of your Honour's time. Whether it was from bad management or on account of negligence in bringing in new blood, it is clear that latterly Court Concordant got into a bad state, financially and numerically. The result was that new members would not voluntarily join, and the

funds became a diminished and diminishing quantity. The defendants became possessed of a desire to divide the funds, and they formed an erroneous notion that because they were not registered under the Act of 1875 they were a separate society, and capable of dividing the funds without the consent of the Order. That, of course, is wrong, and Court Concordant were repeatedly warned about it. I have letters in which instructions were given that the funds could not legally be divided. So long ago as September, 1894, a letter was written by the Permanent Secretary of the Order (Mr. T. Ballan Stead) to the secretary of Court Concordant, pointing out the illegality of it, telling him the real state of the law, and warning the court not to commit the illegal act they proposed to do. Notwithstanding that, in June of last year the defendants contumaciously divided the funds of the court, and each member of the court received *pro rata* a share of the proceeds. It therefore became necessary to institute those proceedings. The defendants then had to consult a solicitor, and they instructed my friend Mr. Greaves, of the firm of Greaves and Harker, of Birstall, to investigate the matter, and although it was a very complicated character, my friend Mr. Greaves found out that his clients had made a mistake with regard to their position—that they had no right to secede or divide except under and subject to the general laws, and that they had no right to divide the funds without the consent of the central body. Acting upon the sound advice of my friend Mr. Greaves, the defendants have, I am glad to inform your Honour, consented to judgment to rectify their mistake, and the terms of that judgment have been agreed between Mr. Greaves and myself, subject to your Honour's approval, and to same being settled in Chambers by your Honour's registrar. The proposed judgment of the court which I ask for is this :—

That judgment be taken for a perpetual injunction as claimed in the particulars of claim, and declare :—

(1.) That the defendants and the remaining members of Court Concordant are trustees of the moneys and properties belonging to that court (including the £200 money deposited in the Cleckheaton Branch of the Huddersfield Banking Company Limited, in the names of the defendants Umpleby, Gomersal, and Plumb, and illegally divided amongst the members of Court Concordant) upon the trusts applicable thereto set forth in the general laws and the rules of the said society and court.

(2.) That the defendants and the remaining members of Court Concordant are liable to pay to the plaintiffs as trustees of the Order all moneys illegally divided by or amongst the members of Court Concordant contrary to No. 49 of the aforesaid general laws, section 1, sub-section *f*, and which moneys are agreed at £200.

(3.) That the defendants and the remaining members of Court Concordant are liable to pay to the plaintiffs as trustees of the Order the fine of £5, and the further fine of 10s. per day from 16th May, 1895, until judgment under the aforesaid 49th general law, section 1, sub-section *f*.

(4.) That the defendants are also liable to pay to the plaintiffs as trustees of the Order the contributions and levies and fines for non-payment thereof due to the said Order under the aforesaid general laws.

(5, 6, and 7.) That all the necessary accounts and inquiries be made and taken, and that the costs be paid by the defendants.

Mr. Ward : That is a form of judgment which I have taken in similar actions and which Mr. Greaves has approved. That is the judgment to be taken in this action. The High Court of the Order acting by the Executive Council, which is the governing body for the time being, has, however, no desire to deal harshly with courts such as this, where the members are in a humble way of life, and who have simply mistaken their legal position. I have therefore agreed that these terms will not be enforced if further terms which have been agreed upon are carried out. Those terms will form no part of your Honour's judgment, but it is necessary that I should mention them generally. We have agreed that on payment into the bank, on or before the first day of April, 1896, of £200 or such less sum as shall be certified by Mr. Samuel Hudson, of Leicester, the actuary of the Ancient Order of Foresters, to be a sufficient fund, having regard to the circumstances to provide for sick, funeral, and other benefits and contingencies to be undertaken by Court Concordant, and on payment by defendants to-day of an agreed sum for costs and valuation fee, and on Court Concordant forthwith adopting (subject to the approval and consent of the plaintiffs and of all other persons whose consent is necessary under the Friendly Societies Act or the said general laws) new rules for the government of such court, and on registration of such rules and of the court as a branch of the Ancient Order of Foresters Friendly Society, and on duly appointing proper officers, including trustees, the plaintiffs agree that the said sum of £200 or such lesser sum as may be certified by Mr. Hudson, shall thereupon be transferred into the names of the new trustees, to be held by them as money belonging to Court Concordant upon the trusts applicable thereto contained in the general laws and the existing and future court rules ; and the plaintiffs agree not further to proceed with this action or the accounts or inquiries therein. But on failure by the defendants to carry out the terms the judgment is to be enforced. Shortly stated, when the money which has been divided has been paid into the bank, this court is to have a new charter, which we call a dispensation, and it is to continue to carry on its business subject to the general laws of the Ancient Order of Foresters Friendly Society, and under new court rules with registration of the court as a branch under the Friendly Societies Act of 1875. If that is done the other terms will not be enforced, and your Honour will be freed from a case the trial of which would occupy the court the whole of the day, if not longer. I dare say your Honour doubtless knows something of the working of these societies. I am told that this Court Concordant is not the only one included in the Birkenshaw Humane District, and there is another court in that district which contemplates similar proceedings, and I think your Honour will agree that the more widely it is known in this neighbourhood through the medium of your Honour's court, that the division of these funds is an illegal act, the better it will be for all those courts and for Foresters generally. My friend Mr. Greaves is here to express on behalf of the defendants regret for the illegal division on the part of these men.

Mr. Greaves : I appear for the defendants. The facts expressed by my friend are substantially correct. The funds were divided. I think it was wise to make terms, and I have advised my clients to fall in with the terms which have been produced. I wish to express regret on behalf of the men whom I represent for their illegal action.

His Honour: What is the amount of money which has been divided?

Mr. Ward: Two hundred and odd pounds, but we have agreed to take the amount to be put into the bank at £200.

His Honour: Well, it is a very interesting statement which Mr. Ward has made, and so far as I am concerned I have no hesitation in concurring in the course which it has been proposed to take. If the facts which are set out here before me be accurate, there can be no doubt that the defendants would have no chance of success if the action had gone on. They might have had to take evidence as to the members' shares, but the defendants would be without any defence in any proceedings against them, and I am quite content that the judgment should go in the terms which have been agreed upon.

Judgment was entered accordingly.

CASE 154.

HIGH COURT OF JUSTICE, CHANCERY DIVISION. 1882. *Feb.* 28. CHITTY, J.

COX *v.* JAMES.

Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap.* 60), *sec.* 16—*Illegal division of Lodge Funds—Rules—Trustees' liability—Order for re-payment.*

This was an action brought by two members of the Directorate of the Manchester Unity of Oddfellows against the Trustees of the Strangers' Refuge Lodge, at Feckenham, belonging to the Studley District, to obtain an order of the court rendering them jointly and severally liable to pay £998 5s. 3d., which had been divided among the members of the lodge contrary to the general rules of the Unity. By the 2nd general rule of the plaintiff society it was provided that every branch of the parent society should be bound by the general rules, but they might make such other rules as such branch thought fit, provided they were certified by the Corresponding Secretary of the Unity as being consistent with the general rules. The rules of the Strangers' Refuge Lodge provided that the whole of the objects and rules of the district branch should be carried into effect in conformity with and subject to the provisions made in and by the general rules of the Order. The 62nd rule of the Unity provided that lodges desirous of appropriating surplus capital must make application to the Grand Master and Board of Directors, and furnish all the particulars required on a form to be supplied by the Corresponding Secretary of the Order, and it empowered and authorised the directors to allow appropriation of surplus capital subject to the conditions therein mentioned. It further provided that in the event of a lodge at any time making a division of its funds contrary to the said rule, the amount so divided should be forfeited to the Sick and General Fund of the Order, and the trustees of such lodge allowing the same to be distributed, or any member receiving any portion thereof, should be held personally responsible for the amount so misappropriated, and the directors might take proceedings for enforcing such forfeiture. On the 17th of January, 1881, a meeting of the lodge was summoned to consider the subject of surplus capital, and it was then resolved to divide a sum

of £1,000 as a bonus among the members ; and on the 28th of the same month there was a meeting of the officers and trustees of the lodge, at which it was decided that the secretary should have extra remuneration for making out the scale of payments for the proposed division of the bonus. On the 17th of February, 1881, it having come to the knowledge of the Board, who were assembled in Manchester at the time, a telegram was sent by them to the secretary of the Loyal Strangers' Refuge Lodge, stating that intimation had been received that the lodge intended to divide £1,000 among its members, and warning them that this would be illegal ; but notwithstanding that notice the division was proceeded with, and £998 5s. 3d. was paid away, a resolution being passed by the members that they would indemnify the trustees against any legal proceedings that might be taken. Before such division no application had been made to the Grand Master or the Board of Directors, nor were any particulars furnished, nor was the division consented to or authorised by the directors of the Unity. The plaintiffs had also ascertained that five lodges or district branches had followed, or threatened to follow, the example of the Loyal Strangers' Refuge Lodge, and they, therefore, were desirous of obtaining the declaration of the court to put an end to further distribution of the funds, except consistently with the general rules.

Mr. Cozens Hardy, Q.C., and Mr. Chadwick Healey appeared for the plaintiffs ; Mr. W. Barber, Q.C., and Mr. Stallard for the defendants.

For the defence, Mr. Barber said that the trustees had acted in good faith, and it was not a case of misappropriation of moneys to their own use, as they had divided it amongst the 98 members of the lodge.

Mr. Cozens Hardy · They have taken their share with the rest.

Mr. Justice Chitty said he was sorry to hear that other lodges intended to divide their surplus funds ; it showed the influence of a pernicious example.

Mr. Barber said at the time the money was divided there was much distress amongst some of the members of the lodge. Under the circumstances he suggested that the defendants should only be called upon to replace the money to the benefit of the lodge, and not be required to pay it to the Sick and Funeral Fund of the whole Order, as asked by the statement of claim.

After stating that he did not want to hear Mr. Cozens Hardy in reply, unless he had been instructed to make any concession, to which the learned counsel replied in the negative, Mr. Justice Chitty delivered judgment. He said : This is a very plain case. At the same time I may regret personally I have to make an order of the nature I am about to make against trustees. I am willing to accede to the argument adduced on their behalf by the counsel, who has argued it most temperately and properly, and who says that what has been done has been done by these defendants in good faith. That is an argument which of course I cannot listen to, because the acts done have been done contrary to and in violation of the rules, and were done after ample warning, because these gentlemen who have proceeded to make the division were told that if they did so proceedings would be taken against them. They have acted on their own notion of what is right. All I have to do is to act upon the true construction of the rules. The

only point which I think I need mention is this : The 62nd rule provides that " In the event of a lodge at any time making a division of its funds contrary to this and the 3rd section of the 1st rule, the amount so divided shall be forfeited to the Sick and Funeral Fund of the Order." It has been faintly argued, because counsel was really too sensible to endeavour to make much of the argument, that the word "and" must be read so that there was no right to sue unless the division was made as well contrary to the 62nd rule as to the 3rd section of the 1st rule. In my judgment that argument, if it had been put before me—although it has to some extent been put before me, and therefore I must deal with it –is absolutely untenable. The proper way to read the rule is this : " In the event of a lodge at any time making a division of its funds contrary to this rule," and " In the event of a lodge at any time making a division of its funds, contrary to the 3rd section of the 1st rule." That is rendered necessary by the substance of the 62nd rule and the substance of the 3rd section of the 1st rule. The 3rd section of the 1st rule deals with a case of a society that secedes, and that is not the case now before the court. The rule in question, the 62nd, deals with appropriations, and has a distinct clause, the substance of which is that no appropriation is to be made by a particular lodge unless it has the previous sanction of the directors of what has been called the Unity ; but there is no question that the directors have not given such sanction, and there is no question therefore to my mind but that these trustees are liable. The fund which they have divided according to this rule is, they say, forfeited. I do not think that the term has been used in its strict sense ; to my mind it is not very material whether it is or not. The fund they have divided is to go to the Sick and Funeral Fund of the whole Order. That is a fund which exists for the benefit of the whole Order, including members of this particular lodge and all the other lodges affiliated. There is nothing else for me to do except to make the order declaring the trustees are jointly and severally liable according to the language of the rule itself, to order them to make payment and to pay the costs of the action. Mr. Cozens Hardy will probably give them some time, and I shall see they have some reasonable time, because I will not say what are the rights of the trustees against absent parties, but there can be no doubt the whole of this £1,000 has been divided between the members of this particular lodge in certain portions, and each one of the members who received his portion of the £1,000 ought to refund it to the trustees. I must leave that matter to the trustees and to those persons who received the money. As regards the plaintiffs, I only suggest that a certain reasonable time should be given. I do not know what condition of life these people are in, but it is unnecessary to bring ruin on the trustees who are now made liable by my order.

Mr. William Barber : I suggested that it would be a much easier thing for these trustees to get the money back.

Mr. Justice Chitty : I will give you time.

Mr. William Barber : It would be easier to get it from them to repay it to the funds of this particular lodge than to pay it over to the Sick and Funeral Fund of the Order.

Mr. Justice Chitty : What I mean is, you must get it back from the persons to whom you paid it. I cannot do it.

Mr. Cozens Hardy : I will assent to any suggestion your lordship makes as to time ; whatever time your lordship thinks is reasonable.

Mr. Justice Chitty: What is the position in life of your clients, Mr. Barber?

Mr. William Barber: We have divided this money among people who are very poor. Judging from the letters of the high officials of the Order, I should think they are rather illiterate people.

Mr. Cozens Hardy: One is an innkeeper, another a carrier, another a builder, another a carpenter, and another a farmer.

Mr. Justice Chitty: What do you say to two months?

Mr. Cozens Hardy: I assent to that at once. It will be in the terms of paragraph 1 and paragraph 3 of the prayer.

COUNTY PALATINE OF LANCASTER. SITTINGS IN MANCHESTER. 1889. *May* 20. *Before* BRISTOWE, V.C.

CASE 155.

HOLMES *v.* TAYLOR.

Friendly Society—Illegal division of Funds—Rules—Order for repayment—Injunction.

This was a case which raised an important point as to the relations of individual lodges in the Manchester Unity of Oddfellows Friendly Society to the Order itself. The plaintiffs are John Joshua Holmes, Thomas Walton, John Tucker Cox, and John Schofield, who are trustees of the society, and Robert Thomas Eastwood, the Grand Master of the Order, together with others, who sued on behalf of themselves and all other directors of the Order. The defendants are Thomas Taylor, William Dudworth, John Haworth, George Haworth, and James Pilkington, trustees of the Loyal Prosperity Lodge of the Haslingden District, connected with the said Order. Mr. Maberly (instructed by Messrs. Cobbett, Wheeler, and Cobbett) appeared for the plaintiffs, and Mr. Jones (instructed by Messrs. Atkinson, Saunders, and Co.) for the defendants.

Mr. Maberly: May it please your Honour. This is a motion for judgment in the non-delivery of defence by the defendants. The plaintiffs, as set out in the statement of claim delivered, are James Joshua Holmes, Thomas Walton, John Tucker Cox, and John Schofield, trustees of the Independent Order of Oddfellows, Manchester Unity, Friendly Society; Robert Thomas Eastwood, Grand Master of the said society, and the said James Joshua Holmes and Thomas Walton, directors of the said society, on behalf of themselves and all the other directors thereof; and the defendants are Thomas Taylor, William Duckworth, John Haworth, George Haworth, and James Pilkington, trustees of the Loyal Prosperity Lodge, No. 52, of the Haslingden District Independent Order of Oddfellows, Manchester Unity, Friendly Society. The action is not dissimilar from one which your Honour had before you some time ago, in which the decision which was come to in this court was taken to the Court of Appeal, and there confirmed. As

your Honour sees from the statement of claim, the parties are members of the Oddfellows' Order, and in this case the question is between the Order—which, as your Honour knows, is at the head of the hierarchy altogether—and one of the lodges which, in the view of the officers of the Order, has been committing a breach of the rules of the Order; and, in fact, which has been committing a breach of contract. Now, sir, the statement of claim sets forth that the plaintiffs are trustees and directors and Grand officers of the Independent Order of Oddfellows, Manchester Unity, as I have read to your Honour. The Order is registered under the Friendly Societies Act. The defendants are the trustees of the Loyal Prosperity Lodge, 52, of the Haslingden District of the Order, and they are the members of the committee of management thereof. So that your Honour sees we have three grades or steps: first of all we have the lodge, then the district to which the lodge belongs, and above that, and behind all, we have the Order. Then, by rule 1 of the rules of the lodge, it is provided as follows: "The whole of the objects and rules of this lodge shall be carried into effect under the control of and subject to the provisions made in and by the general and district rules, and the whole of the said rules of the district and general rules of the Order, and any alteration or amendment thereof hereinafter made and duly registered shall be as binding upon the members of this lodge as if the said district and general rules were inserted in the rules of this lodge." Then, your Honour, proceeding to the district rules, we have provided by rule 1, amongst other things, as follows: "The whole of the objects and rules of this district branch shall be carried into effect in conformity with, and subject to, the provisions made in and by the general rules of the Independent Order of Oddfellows, Manchester Unity, Friendly Society, and the whole of the said rules of the Order and any alterations or amendments thereof hereafter made and duly registered shall be applicable to the members of this district in the same manner as if the said rules were inserted in these rules." So that that again carries us onwards by the rules of the Order. Then by rule 62, sub-section 1, of the Order it is provided that lodges desirous of appropriating surplus capital must make application to the Grand Master and the Board of Directors in the manner which is mentioned in the rule. Then the rule provides certain forms which are necessary to be gone through; and by rule 62a, sub-section 1, of the same rules, it is provided that the directors shall allow appropriation of surplus capital on the conditions in the rule mentioned; and by sub-section 4 it is provided as follows: "In the event of a lodge at any time making a division of its funds contrary to this and section *f* (section *f*, rule 1, relates to a lodge desiring to secede) of rule 1, the amount so divided shall be forfeited to the Sick and Funeral Fund of the Order, and the trustees of such lodge allowing the same to be distributed, or any member receiving any portion thereof, shall be held personally responsible for the amount so misappropriated, and the directors may take proceedings for enforcing such forfeiture, and the expenses incurred by them in enforcing against the offending lodge the provisions of this rule shall be paid out of such forfeited amount." Then paragraph 6 of the statement of claim states, that "on or about the 24th March, 1888, without any application having been made by or on behalf of the Loyal Prosperity Lodge to the plaintiffs, and without the knowledge and consent of the plaintiffs, the defendants, in breach of the said rules of the said Order, wrongfully appropriated and divided the sum of £350 16s., part of the funds of the said lodge, among themselves and others, the members of such lodge. On becoming aware of such appropriation and division the plaintiffs, pursuant to a resolution in that behalf duly

passed, caused a notice dated the 27th of November, 1888, to be served on the defendants, demanding immediate repayment to the funds of the said lodge of the said sum of £350 16s., but the defendants have neglected and refused and still neglect and refuse to comply with such demand, and they now threaten and intend to deal in like manner with other funds of the said lodge, contrary to the said rules and without the sanction of the plaintiffs.

The Vice-Chancellor: These funds you hold to be funds generally; that is to say, sick list funds.

Mr. Maberly: Yes, under rule 62a of the Order, the officers of the Order are entitled to come upon the officers of the lodge to meet this improper and wrong appropriation out of their own pockets.

The Vice-Chancellor: I am afraid, Mr. Maberly, I am personally interested. In case of sickness, I believe, I should be entitled to a weekly payment as an Oddfellow from money of the Order; and the grant is not restricted to the particular lodge of which I am a member, but comes from the general funds.

Mr. Maberly: Yes, that is so.

The Vice-Chancellor: It comes from the Sick and Disabled Fund.

Mr. Maberly: I do not think my friend Mr. Jones would consider that on that ground your Honour is disqualified to deal with this matter.

Mr. Jones: No, not at all.

The Vice-Chancellor: That being so, I had better dispose of it.

Mr. Maberly: Then the statement of claim proceeds in paragraph 7, to state that, "By a resolution of the Committee of Management of the Order, duly passed on the 16th of February, 1887, the amount improperly divided by the defendants as aforesaid was forfeited to the Sick and Funeral Fund of the Order." Then, in view of these facts which stood now admitted by the defendants, we ask for "a declaration that the appropriation by the defendants as trustees of the said lodge of the said sum of £350 16s., part of the funds of such lodge, and the division thereof among the members of the said lodge without the sanction of the plaintiffs, as in that behalf provided by the said rules of the said Order, was and is a breach of trust by the defendants, and that the defendants are personally liable to make good the sum so divided for the benefit of the Sick and Funeral Fund of the said Order." Then we ask for an order upon the defendants "for payment of the sums so appropriated, as aforesaid, in breach of trust."

Mr. Jones: You do not ask for an injunction, I presume?

Mr. Maberly: Yes, we do. Then we ask for an injunction—an injunction restraining the defendants from further appropriating and dividing or permitting to be appropriated and divided, the funds of the said lodge, or any part thereof, without complying with the rules of the said Order in that behalf made." And fourthly, "to have the costs of this action paid by the defendants personally." Now, in this case, your Honour, I am afraid I must press for the full relief which is asked for,

because the question is a very important one in relation to the Order. As your Honour will see, it is not merely the case of this one particular lodge, but if a step of this kind is once acquiesced in, it opens the door to the practice of similar conduct on the part of all those lodges which are in the fortunate position of having surplus funds to dispose of, and thereby the poorer lodges in the Order will suffer, and the whole system is affected prejudicially. So that there being an avowed intention by non-pleading on the part of the authorities of the lodge to accept the decision, I must submit that the injunction must go as a matter of course.

The Vice-Chancellor: The decision which I gave in a similar case was that I came to the conclusion, I think, that I had the power to stay the action and grant an injunction.

Mr. Maberly: Yes.

The Vice-Chancellor: But was there any payment of money?

Mr. Maberly: I forget the terms of the order now.

The Vice-Chancellor: My impression is that I did not make any order for the payment of money.

Mr. Maberly: Your Honour treated it as a breach of trust, and being a breach of trust it was especially a matter which came within the jurisdiction of the court.

The Vice-Chancellor: I was not asked, I think, to order the repayment of money. I was asked to restrain a further breach of the rules, and I did so.

Mr. Maberly: That was in regard to a rule which relates to secession. Your Honour may remember that that was a case in which a lodge desired to secede from the Order without going through the formalities prescribed, and without obtaining the consent of the Order itself to its secession.

The Vice-Chancellor: I think it was argued in that case that there was a domestic forum provided somewhere by the society, and that this court ought not to interfere where there was a peculiar and proper forum provided which could deal with the whole question in dispute.

Mr. Maberly: Yes, that was so.

The Vice-Chancellor: And I came to the conclusion that although there was a domestic forum, there was no exclusion of the jurisdiction of this court in that, and that the case made was a proper case in which to grant an injunction.

Mr. Maberly: Yes, and your Honour granted an injunction in that case, and the case was taken to the Court of Appeal, and the Court of Appeal affirmed your Honour's decision. I do not think, as your Honour says, that the question of the actual payment of money arose in that case. It was the case of a lodge which threatened to secede, and they were going to make off with their funds, as they happened to be a prosperous lodge, whereas the rules of the Order provide that if a lodge desires to secede, a certain permission was to be obtained, and certain payments are practically to be made. But this case which is now before

your Honour, comes under the jurisdiction of the court, under the common form of a breach of trust. The trustees of this Loyal Prosperity Lodge are, contrary to the contract between them and the Order, dealing with this money in an unauthorised manner, and in a manner which is directly and completely opposed to the rules, and the rules provide that they, in their character of trustees, are to be personally liable for this money which they have so wrongfully dealt with. Then, apart from the case which was before your Honour, there are two other cases in connection with this matter which have come before the High Court of Justice. One of the cases is Avery *v.* Andrews.

The Vice-Chancellor: I forget the name of the case which was before me.

Mr. Maberly: The case before your Honour was Schofield *v.* Vause.

The Vice-Chancellor: I remember the case very well as arising out of the organisation of the Manchester Unity of Oddfellows, but I do not remember to have seen it reported.

Mr. Maberly: Schofield *v.* Vause has not been reported in the authorised reports. Now Cox *v.* James is a case to which I call your Honour's attention. It has not been reported so far as I know, but I have here a print of the shorthand writer's notes.

The Vice-Chancellor: Who was the case of Cox *v.* James before?

Mr. Maberly: It was before Mr. Justice Chitty in the Chancery Division, on the 28th of February, 1882. "The action was brought by two members of the Directorate of the Manchester Unity of Oddfellows against the Trustees of the Strangers' Refuge Lodge at Feckenham, belonging to the Studley District, to obtain an order of the court rendering them jointly and severally liable to pay £998 5s. 3d. which had been divided amongst the members of the lodge, contrary to the general rules of the Unity. By the 2nd general rule of the plaintiff society it was provided that every branch of the parent society should be bound by the general rules; but they might make such other rules as such branch thought fit, provided they were certified by the Corresponding Secretary of the Unity as being consistent with the general rules. The rules of the Strangers' Refuge Lodge provided that the whole of the objects and rules of the district branch should be carried into effect in conformity with and subject to the provision made in and by the general rules of the Order. The 62nd rule of the Unity provided that lodges desirous of appropriating surplus capital must make application to the Grand Master and Board of Directors, and furnish all the particulars required on a form to be supplied by the Corresponding Secretary of the Order; and it empowered and authorised the directors to allow appropriation of surplus capital subject to the conditions therein mentioned. It further provided that in the event of a lodge at any time making a division of its funds contrary to the said rule, the amount so divided should be forfeited to the Sick and General Fund of the Order; and the trustees of such lodge allowing the same to be distributed, or any member receiving any portion thereof, should be held personally responsible for the amount so misappropriated, and the directors might take proceedings for enforcing such forfeiture. On the 17th of January, 1881, a meeting of the lodge was summoned to consider the subject of surplus capital, and it was then resolved to divide a sum of £1,000 as a

bonus among the members; and, on the 28th of the said month, there was a meeting of the officers and trustees of the lodge, at which it was decided that the secretary should have extra remuneration for making out the scale of payments for the proposed division of the bonus. On the 17th of February, 1881, it having come to the knowledge of the Board, who were assembled in Manchester at the time, a telegram was sent by them to the secretary of the Loyal Strangers' Refuge Lodge, stating that intimation had been received that the lodge intended to divide £1,000 among its members, and warning them that this would be illegal; but, notwithstanding that notice, the division was proceeded with, and £998 5s. 3d. was paid away, a resolution being passed by the members that they would indemnify the trustees against any legal proceedings that might be taken. Before such division no application had been made to the Grand Master or the Board of Directors, nor were any particulars furnished, nor was the division consented to or authorised by the directors of the Unity. The plaintiffs had also ascertained that five lodges or district branches had followed, or threatened to follow, the example of the Loyal Strangers' Refuge Lodge, and they, therefore, were desirous of obtaining the declaration of the court to put an end to further distribution of the funds, except consistently with the general rules." Then it is argued on behalf of the plaintiffs, by Mr. Cozens Hardy and Mr. Chadwick Healey, and by Mr. Barber and by Mr. Stallard for the defendants, and Mr. Justice Chitty delivered judgment, in the course of which he said: "This is a very plain case. At the same time I may regret personally I have to make an order of the nature I am about to make against trustees, I am willing to accede to the argument adduced on their behalf by the counsel, who has argued it most temperately and properly, and who says that what has been done has been done by these defendants in good faith. That is an argument which, of course, I cannot listen to, because the acts done have been done contrary to and in violation of the rules, and were done after ample warning; because these gentlemen, who have proceeded to make the division, were told that if they did so proceedings would be taken against them. They have acted on their own notion of what is right. All I do is to act upon the true construction of the rules." Then he refers to the rules and proceeds to say: "The fund which they have divided, according to this rule, is, they say, forfeited." In the defence there has been an argument raised with regard to the word "forfeited," and Mr. Justice Chitty says: "I do not think that the term has been used in its strict sense. To my mind it is not very material whether it is or not. The fund which they have divided is to go to the Sick and Funeral Fund of the whole Order, including members of this particular lodge, and all the other lodges affiliated. There is nothing else for me to do except to make the order declaring that the trustees are jointly and severally liable, according to the language of the rule itself, to order them to make payment, and to pay the costs of the action." And then that is the order which he makes upon the defendants. Then there was another case, of Avery *v.* Andrews and others, where the order was made in the first instance by Mr. Justice Kay.

The Vice-Chancellor: I think the point raised in that case does not apply here, does it Mr. Maberly?

Mr. Maberly: No, sir; I do not think it does. Then, I have now brought all the facts before your Honour upon which I rely, and I ask the court to grant us the relief prayed, and to order the defendants to

make repayment of the money which they have improperly and wrongfully divided among the members of the lodge, to grant us an injunction, and to order the defendants to pay the costs which have been incurred in this action.

Mr. Jones: I appear for the defendants in this case, your Honour, and I cannot resist the order which is asked for; but I think, in justice, I may ask your Honour not to make an order upon the defendants to pay the costs. The facts of the case are these: That in the case of Cox *v.* James, which my friend Mr. Maberly has cited to the court, it there appears that the trustees had had notice that they were not to divide the funds; but here, in this case, they had no such notice, and what the trustees did was done in total ignorance of the rules of the Order. They thought they had full power to do what they had done, and they had no notice to the contrary, and in that way they went and divided these funds among the members, and now they have to submit to your Honour's order for the repayment by them of this amount of over £350 out of their own pockets. And it is under these circumstances that I ask the court not to make an order against us as to the costs, because the rule in question, which is set out in paragraph 5 of the statement of claim, states that the expenses incurred by them—that is to say, the expenses incurred by the Order—in enforcing against the offending lodge the provisions of this rule shall be paid out of such forfeited amount." Now, sir, seeing the hardship that is imposed on the defendants in this case, and that they not only have to pay back this large sum out of their own pockets, but that the other members of the lodge in this case, as in most other lodges, are, as your Honour is perfectly well aware, chiefly working men, from whom there is very little chance that the defendants will ever be able to obtain the money from again. I ask your Honour not to make an order against them directing them to pay the costs of this application, because I submit that full justice will be done in the matter if your Honour leaves the costs incurred by the plaintiffs to be paid out of the forfeited sum; and then, subject to that, I agree to the order.

The Vice-Chancellor: Do you press for costs, Mr. Maberly?

Mr. Maberly: I am afraid I must press for the costs, your Honour.

The Vice-Chancellor: I am sorry to feel compelled to make the order asked for. I take precisely the same view that was taken by Mr. Justice Chitty, when dealing with the case of Cox *v.* James, and I say that I am quite sure that the defendants in this case did not intend to deal with the money in any way that they thought to be either fraudulent or wrong. But I am afraid that I cannot pay attention to Mr. Jones's argument that they were ignorant of their own laws. If there is an ignorance which ought never to be excused, it is an ignorance of the laws under which they were acting as trustees for a body of men who were in all probability as little able to protect themselves as they could be, and who, therefore, required the protection of these trustees, who, as a rule, are officers standing on a rather higher social position than the people for whom they are the representatives as trustees. I cannot, therefore, give heed to the argument as to their state of ignorance, and I am afraid I must make the order in the terms asked for in the statement of claim. There must, in my mind, therefore, be an order for the repayment of the money, and there must be an injunction if Mr. Maberly thinks it right to take the injunction, though from what I hear stated I do not

think it is likely that the people who have offended will be likely to be there again, and then I am afraid further that I must order the defendants to pay the costs of this action. Fortunately for them they will not be much.

Mr. Jones: What time will my friend give us as to the payment of the money?

The Vice-Chancellor: I think you ought to have reasonable time for the repayment of the money.

Mr. Jones: I think so, your Honour. What time will my friend give us? Three months from this date?

Mr. Maberly: I will give my friend a month.

Mr. Jones: That is a very short time indeed. I think you might give us three months.

The Vice-Chancellor: It is rather a long time is three months, Mr. Jones.

Mr. Maberly: I will leave it entirely in your Honour's hands.

The Vice-Chancellor: I think you may take six weeks, and you must tax and pay the costs in addition.

Mr. Jones: That is six weeks from the service of the order.

The Vice-Chancellor: Yes, six weeks from the service of the order.

Mr. Maberly: That is getting another fortnight.

CASE 156.

REDDITCH COUNTY COURT. 1882. *Aug.* 6.

JAMES *v.* **BARRETT.**

Friendly Society—Illegal division of Surplus Funds—Members ordered to refund amount illegally divided.

At the Redditch County Court, on Saturday, the 5th August, 1882, Charles James and others, Trustees of the Loyal Strangers' Refuge Lodge of Oddfellows, Manchester Unity, Feckenham, sued two members of the lodge, named Barrett and Bennett, to recover the sums of £12 4s. 9d. and £18 12s. 4d. Mr. Holyoake appeared for the plaintiffs, and Mr. Lane for the defendants.—From Mr. Holyoake's statement it appeared that some time since the lodge decided to divide a surplus sum of £998 among the members; and, notwithstanding that the Central Order informed the trustees that they were acting illegally, the division was made. The head society proceeded against the trustees in the High Court of Chancery, before Mr. Justice Chitty, who ordered the defendants to repay within two months the money which had been divided. A meeting of the lodge members was subsequently held, and defendants and others agreed to refund to the trustees the amount they had received. Mr. Lane did not dispute the facts, but argued that by the general laws of the Order the matter should be settled by arbitration, and that the

court had no jurisdiction.—His Honour, however, considered that this was a matter beyond the jurisdiction of the Order, and one not contemplated by, or provision made for in, the rules, and gave judgment for the amount claimed, the money to be paid in two instalments. As these were test cases, and involved serious consequences, his Honour said he was willing to grant a case for a superior court, but the solicitor for the defendants declined to accept one.

CASE 157.

WARWICK COUNTY COURT.
1887.
April 19*th.*
Before
SIR R. HARRINGTON.

OLIVER *v.* WILLITTS.

Friendly Society—Claim by Brother of deceased member for balance of funeral benefit—Nominations—Wishes of deceased member to be given effect to if practicable—Claim disallowed.

In this case the plaintiff was James Oliver, 10, Castle Lane, Warwick, the defendant being George S. Willitts, of Smith Street, in the same town, whom he sued as secretary to the Loyal Oken's Lodge of Oddfellows, No. 2,242, of the Manchester Unity. The claim was for £4 3s. 6d., balance alleged to be due from the lodge on account of his brother William Oliver's funeral benefit of £10. Mr. J. Boddington appeared for the plaintiff, and the defendant was represented by Mr. G. W. Churchley, Broad Court, Bow Street, London, W.C. Mr. Churchley said his answer to the action was that the lodge had acted throughout in accordance with the will of the deceased member, and that the plaintiff was not the proper person to receive the money. The lodge was anxious to have the matter fully discussed, and the decision of his Honour would be regarded as quite satisfactory and conclusive. In stating the case, Mr. Boddington explained that the plaintiff's brother, who joined the Loyal Oken's Lodge some thirty or forty years ago, died in February of last year. In accordance with the rules of the lodge he on the 5th of December, 1884, signed what was known as a nomination for the payment of his burial money. This ran in the following form: "I, William Oliver, a member of the Loyal Oken's Lodge, No. 2,242, Register No. 823, Edmondscote District, of the Manchester Unity of the Independent Order of Oddfellows, do hereby wish the officers of the lodge to see to my funeral arrangements, to place a stone at my grave, and to pay the expenses out of my burial money, and the balance to be paid over to my brother, James Oliver. As witness my hand this 5th day of December, 1884. Signed, William Oliver's mark X. Witnesses, William Taylor, Thomas Morris." It was upon the basis of that nomination that the present claim was brought. For some years before his death William Oliver was a great invalid, and found it necessary to become an inmate of the Warwick workhouse. At his death the plaintiff paid the expenses connected with his brother's funeral, and he now, as a natural consequence, asked the society to hand over to him the moneys which had been provided by his brother as the result of his contributions as a member of the lodge. The lodge had paid to him the sum of £5 16s. 6d., and the question now in dispute was whether the deceased brother's wish had been complied with by the placing of a certain stone by the plaintiff over his grave, but which, so far as he could understand, the lodge did not consider to have been sufficiently

expensive. Remembering that at the time of his death William Oliver was virtually a pauper, Mr. Boddington said he failed to see that there was any reason for placing a very expensive stone to his memory, and he insisted that the spirit and letter of the deceased's wishes expressed to his brother, contained in the nomination, had been properly carried out. A stone was purchased and placed upon the deceased man's grave at the cemetery, simply informing persons who read it that underneath there was buried William Oliver, who died January 18, 1886, at the age of 73 years. He understood that the stone was now in court, and therefore his Honour would have an opportunity of seeing it. It was a rather unusual proceeding to bring a stone out of a cemetery, but he was informed that the other side had subpœnaed the keeper of the cemetery to produce it. With respect to the claim which the plaintiff had against his deceased brother's effects, these latter were embodied in the sum of £10. When the deceased was removed to the Union the sick benefit was no longer required, and there only remained the question of the £10 funeral money to be dealt with. Plaintiff had paid out of his own pocket more, in fact, than was represented by the whole of the £10. He had complied with the requirements of his brother, who seemed to have expressed the wish that his funeral should be properly carried out, and a stone placed at his grave. Mr. Boddington incidentally mentioned that this case had excited some amount of local interest. He had been informed that in the course of some unpleasantness with the lodge, the plaintiff had acted with some degree of insolence, but he desired to say that in this he did not in the least support him.—Plaintiff stated that he was the brother of William Oliver, deceased, who was up to the time of his death a member of the defendant society. He had belonged to it for about forty years, and had been a regular contributor to the funds during that period. His brother, about the year 1884, through paralysis and other illness, had to go to the Warwick workhouse. In consequence of his inability to work witness provided him with certain moneys, and in December, 1884, his brother made a nomination to the society in his favour, of which he received a copy "after a great deal of trouble." His brother died on the 18th February last year. Witness attended a meeting of the society some time after the receipt of the nomination, in which the question of the distribution of the £10 (which constituted his brother's estate) was considered, and he agreed, with the consent of the society, to carry out the arrangements of his brother's funeral according to the wishes of the deceased; also to erect a gravestone. Altogether he expended the sum of £11 3s., but received only £5 16s. 6d. from the lodge. His brother was indebted to him at his death to the amount of £4 4s. for lodge contributions paid; he paid 8s. for the gravestone, and 7s. for the edging, etc., of the grave. (The gravestone was here brought into court by George Woodfield, the cemetery-keeper, who carried it under his arm in a brown paper parcel, its production causing some laughter.) The balance of £4 3s. 6d. under the nomination he claimed from the lodge, for which he had previously made application. Cross-examined, witness said his brother remained in the workhouse for over three years. He did not know as a fact that his brother wished the lodge to carry out the arrangements for the funeral; but he had been told so. It was his opinion that the lodge wanted "to bury his brother cheaply, and pocket the difference," and he told his brother so. He did not trouble to induce his brother to alter the nomination, though his brother told him "it was all a lie"—that he had himself made no nomination. He never asked anyone to go with him to his brother to get him to make a nomination in his favour, but he did ask a member of the lodge, named Checkly, to

go with him to get his brother to make a will. He did not, however, afterwards take him. All he wanted to do was to get his brother to make the money over to him, so that he could carry out the funeral arrangements properly. Two of the members of the lodge visited his brother twice or three times only in the workhouse during the three years he remained there. Some discussion took place between the lodge and himself as to which should bury his brother, and the decision of the lodge was sent to him in writing. (This was produced, and set forth that the lodge was willing to pay the money over to him when the wishes of the deceased had been carried out.) On May 10th, 1886, he wrote declining to expend the sum of £4 in placing a headstone to the deceased's memory. The lodge afterwards summoned a meeting, in June, which he was invited to attend. The subject of the gravestone was very fully discussed. A sketch of the proposed stone was submitted, but he knew nothing as to the kind of stone to be erected or of Mr. Bonehill's estimate. He did not say in the lodge that he wished to have a large stone, so that his own name could be inscribed upon it as well as his brother's. He was not told that the lodge was ready to incur the sum of £4 3s. 6d. for a gravestone, and that any further outlay must come out of witness's own pocket. He was paid the balance (£5 16s. 6d.) between the £10 and Mr. Bonehill's estimate after the meeting. He admitted that on the 23rd February, the day of the funeral of the deceased, he received a copy of the following resolution: "That as Mr. James Oliver wishes to carry out the arrangements of our late brother Oliver's funeral, this lodge agrees to pay over to him the funeral money when the wishes of the deceased are carried out." He also acknowledged having written the following letter: "26, Castle Street, Warwick, May 10th, 1886.—In reply to your letter of the 3rd instant, relative to the death allowance of my late brother William Oliver, I beg to say that as I have already paid out of pocket the total sum of £9 14s., I cannot pay any more than the other 6s., to balance £10. This I am quite willing to do, but I do not see how the lodge can expect me to go to the further outlay of £4 or £5 to erect a gravestone, and indeed I must decline once and for all to incur such an outlay. And I must beg to repeat my application for the full allowance due to me at my brother's death, according to the rules of the lodge. Your early attention to this final application will oblige.—Your obedient servant, JAMES OLIVER. Mr. G. S. Willitts, secretary, Oken's Lodge of Oddfellows, Warwick." A copy of the following resolution was subsequently sent to him: "That the officers of this lodge be instructed to offer the sum of £5 16s. 6d. to Mr. James Oliver, in part settlement of the claim for the funeral money of our late brother William Oliver, and that the balance of £4 3s. 6d. (the cost of a gravestone and fees, according to the estimate received from Mr. Bonehill) be retained in funds of the lodge until the wishes of the deceased brother are carried out."—Mr. Boddington pointed out that nothing was said by the nominator as to the cost of the stone. The plaintiff had fixed a suitable stone over the grave, and claimed that he was justly entitled to the balance of the money. He had carried out the intention of his brother by paying the funeral expenses. The plaintiff paid his brother's lodge contributions for some time out of his own pocket, and having thus benefited him, it was only natural to suppose that he would wish in return to have any balance that might remain. He (Mr. Boddington) had no other witness to call. His Honour remarked that the section of the Act which empowered a "nomination" to be made expressly stipulated that the person named must not be an officer of the court. It was a question with him, therefore,

whether the "nomination" was not void.—Mr. Churchley said it had been arranged that the "nomination" should be held to be a good one, and that his Honour's decision should be taken upon the facts as put before the court.—The judge said there was no necessity for him to hear any other facts from the defendant's solicitor. The only question was whether, under the circumstances, plaintiff was entitled to have the balance, £4 3s. 6d. paid over to him; but on the assumption that this was a good nomination, he was of opinion that it was not. The effect of it was to impose upon the society the obligation of seeing that the deceased had a proper gravestone, and that his funeral arrangements were properly carried out. It was obvious, he thought, that the deceased member did not expect that the sum which was to be expended in his funeral and gravestone would exceed £10. He ruled that the lodge had not left unconditionally to the plaintiff the erection of a gravestone, and that £4 3s. 6d. would not have been an unreasonable sum to be expended for that purpose. Still, so far as the deceased himself was concerned, it was very immaterial what sort of a stone was put over his grave. Had the question being whether £5 16s. 6d. was too much to expend on the funeral of a person in the position of the deceased he should have revised the charges minutely. His judgment would be for the defendant.

N.B.—See Provident Nominations and Small Intestacies Act, 1883, 46 & 47 *Vic., cap.* 47.

1882.
Dec. 23.
Before
THE STIPENDIARY MAGISTRATE, AT SHEERNESS.

CASE 158.

CORNER *v.* ODDFELLOWS FRIENDLY SOCIETY.

Funeral allowance—Claim to—Illegitimate children.

The Stipendiary Magistrate at Sheerness gave his decision in a case in which the Oddfellows Friendly Society in that town refused to pay the funeral allowance of £20 on the death of one of their members, John Corner, to the deceased's sons, on the ground that they were illegitimate children, Corner having married his deceased wife's sister, whose issue they were. The case has excited much interest among the members of working men's friendly societies throughout the kingdom. One of the deceased's sons, David Corner, a shipwright in Sheerness Dockyard, brought the present action as a test case, and on his behalf it was urged that the rules of the society did not state specifically that the wife and children should be the lawful wife or orphans; and, further, that the deceased, Corner, had belonged to the society since 1844, in which year he married his deceased wife's sister, and continued to pay subscriptions to the society up to the time of his death in June last. The facts were well known to the society; and the society actually paid a funeral allowance to the deceased upon the death of his second wife, the mother of the plaintiff, although they now refused to recognise the children as the children of the deceased.

His Worship then delivered a lengthy judgment. He should not attempt to deal with the case as affecting the deceased wife's sister

question, but he thought that it was competent for the society, as an insurance society for the purpose of insurance, to recognise the wife and children of a deceased wife's sister as if they were the lawful wife and children if there was evidence that they intended to do so. He was of opinion that in this case there was abundant evidence that the society so intended, and he held that they were therefore barred by their own previous deliberate conduct from objecting to this claim. Their conduct in receiving the deceased's contributions for 38 years was one continued protest that they would never raise such an objection. He decided this case on facts peculiar to itself, and the decision must not be taken to settle any general question affecting the issue of irregular marriages. He therefore gave a verdict for the plaintiff for the amount claimed, with full costs.

CASE 159.

STOURBRIDGE COUNTY COURT. 1882. *Feb.* 28. *Before* SIR RUPERT KETTLE.

PUGH *v.* EDWARDS.

Friendly Society—Claim for Funeral Money—Rules—Arrears of Contributions — Arbitration — Plaintiff nonsuited.

This was a case in which the plaintiff, Joseph Pugh, formerly a stationer and tobacconist, of Stourbridge, now of Hagley, brought an action against Samuel Edwards, secretary of the Loyal Queen Victoria Lodge of Oddfellows, belonging to the Manchester Unity, held in Stourbridge, to recover £9 funeral money.

Mr. Wall (Stourbridge) appeared for the plaintiff, and Mr. Shakespeare (Oldbury) for the defendant.

In opening the case Mr. Wall said that plaintiff claimed the £9 due to him upon his wife's death. He (Mr. Wall) believed the claim would be resisted partly on the ground that it was alleged that Pugh was out of compliance—that he was in arrear with his contributions for three nights. Now, assuming that to be a fact, he (Mr. Wall) had to submit that on the club night following the death of Pugh's wife, Pugh paid up the whole claim made against him, and that was a sort of waiver of any sustaining action which might have been previously incurred. Another submission he had to make on plaintiff's behalf arose out of the rules. It had been customary for him to pay 1s. 6½d. per fortnight. Now rule 21 of the lodge said: "That every member of the lodge shall pay the sum of 8½d. per fortnight, which shall be paid into a certain fund," and a little further on "that he shall also pay the sum of 4½d. per fortnight towards the necessary expenses of management." That was thirteen pence per fortnight, and, although there was a table of contributions and benefits at the end of these rules, he should submit that there was nothing in the rules referring to that table incorporating it with them. Contributions, Mr. Wall further stated, were paid in open lodge.

His Honour said that did not alter the rules of the club. There had accrued to plaintiff a certain privilege on the condition that he should be good on the books. He was not good on the books, therefore no benefit

accrued by the death. He was therefore not entitled. He went into the lodge three days after benefit had accrued, paid the money, and that money was accepted.

Mr. Wall: I shall submit that the secretary or the officers present have a general authority for that.

His Honour: Not to put a man good on the books. In some further remarks his Honour said there seemed to be a notion that if people kept the death secret from the person who received the money of the lodge, or sent it—which was the usual mode of perpetrating a fraud upon a lodge—by a person who did not know of the death, and got the lodge to receive arrears, that it was all right.

Mr. Wall: I don't think there was any secrecy in this matter, for it was well known at the time that the claim would be made. Plaintiff's solicitor then called his Honour's attention to rule 23, which states: "That the secretary shall be compelled to read over publicly, every lodge night, the names of all lodge members who will be out of compliance before the next lodge night." He should attempt to prove, at all events, that it had not been customary to do this.

His Honour: Suppose they have not done it?

Mr. Wall: I shall submit that they themselves have contributed to this default.

His Honour: If not, what happens?

Mr. Wall: I shall submit that that is the condition—the precedent of his being out of compliance. Further on, Mr. Wall said the rules were drawn up so badly that one hardly knew what to make of them. He would ask his Honour to take notice of the argument he had used a few minutes before under rule 21, that there was nothing in any part of the rules which incorporated the table of contributions and benefits at the end, and that if plaintiff was only liable to pay 1s. 1d. per fortnight, instead of 1s. 6½d., as he had been accustomed to pay, that he had considerably overpaid his contributions, and was not in arrears. Neither could he find anything in the district, nor in the general rules of the Order, applying to the table of benefits and contributions.

His Honour referred to one of the rules, and asked if it was the one which Mr. Wall meant.

Mr. Wall: No. 21, page 8.

Mr. Shakespeare: It says that the contributions of any persons, aged 38, shall be 1s. 6½d. per fortnight.

Mr. Wall: It does not say so in so many words.

His Honour: Is your argument that the table is not part of the rules?

Mr. Wall: Yes, your Honour, on the ground that it is inconsistent.

His Honour: What do you think it is there for?

Mr. Wall: There is nothing in the rules incorporating that table with the rules.

His Honour: It is part of the rules.

Mr. Wall: I have subpœnaed the secretary to produce the original copy of the rules. I submit that the table is not in the original copy as certified. It is a contradiction to rule 21, which says that every member of the lodge shall pay 8½d. per fortnight for certain purposes, and the sum of 4½d. per fortnight towards the expenses of management, making 1s. 1d. I shall ask the secretary to produce the original rules, as I have subpœnaed him to do.

After some further argument, his Honour asked if they had the arbitration clauses.

Mr. Shakespeare: Yes, I was about to mention that matter. Not only are the arbitration clauses in, but plaintiff's case had been arbitrated, and he has appealed to another lodge, and they also have arbitrated upon it.

His Honour: Is this part of the Manchester Unity? Their arbitration clauses have been tested.

Mr. Wall: And they are bad, your Honour.

His Honour: Suppose you prove all you have opened, it will land us where we are.

Mr. Wall said he would ask the secretary to produce the original rules to satisfy them as to whether that table was in or not.

Mr. Shakespeare: The original rules are lost. We cannot find them anywhere. All we know is that this purports, under the Act of Parliament, to be a copy.

Mr. Wall: It will be more satisfactory to know as a fact whether that table is or is not included in the original rules. If I can see that I shall be perfectly satisfied.

His Honour said he would assist Mr. Wall in any way he could.

Mr. Wall asked his Honour to adjourn the case for the production of the original rules.

His Honour said in that case he must put Mr. Wall under a promise that he would not bring the case before the court again unless the rules were produced.

Mr. Shakespeare said his friend knew there was an arbitration clause in the rules, that plaintiff had availed himself of that, and had availed himself of another rule which enabled him to appeal against the decision of the first arbitrator.

Mr. Wall: My contention is that the arbitration clauses are all bad. We do not choose to be put down by their decision in the matter; it is an illegal decision, and we do not choose to be put down by it.

His Honour eventually gave a nonsuit, with costs.

CASE 160.

BURY COUNTY COURT.
1889.
July 22nd.
Before JUDGE JONES.

DIGGLE *v.* ROSE LODGE, M.U.I.O.O.F.

Friendly Societies Act, 1875 (38 & 39 *Vic., cap.* 60)—*Dispute—Claim for Funeral Money—Rules—Contributions in arrears—Non-jurisdiction plea sustained—Plaintiff nonsuited.*

The plaintiff is a widow, residing at 11, Cartridge Street, Heywood, and she sued the Rose Lodge (61) of the Independent Order of Oddfellows, Heywood, to recover £8 funeral money.—Mr. Butcher appeared for the defendants. In answer to his Honour, Mr. Butcher said that the plaintiff's husband was out of benefit when he died. By the rules, if a member was twelve weeks in arrears he was out of benefit. His defence, however, was that the court had no jurisdiction. Mr. Butcher handed a copy of the rules to his Honour, who said that the difficulty he was in was that there was a rule which stated that if any dispute should arise by any member or person claiming through any member, it should be decided by arbitration. Plaintiff should have gone to a solicitor.—Plaintiff said that she had gone to Attorney Banks and Attorney Todd, and the latter had told her to take it before a court of justice.—Mr. Butcher said the fact was that they advised her not to bring the action.—His Honour said it seemed that he had no jurisdiction in the matter. He was sorry for the plaintiff. The plaintiff said that her husband had paid £60, and if that was the case there was no law. His Honour nonsuited plaintiff, without costs. Mr. Butcher said he must ask that the non-granting of costs in that case will not be a precedent. People would sue those societies in the County Court, and they were bound to act upon their rules.

CASE 161.

LOCKETT *v.* BARRINGTON.

SALFORD COUNTY POLICE COURT.

Friendly Society—Funeral money—Payment of by Treasurer contrary to the provisions of the Friendly Societies Act (38 & 39 *Vic., cap.* 60), *sec.* 28—*Registrar's certificate of death—Conviction.*

Sir J. I. Mantell, at the County Police Court, Salford, on Tuesday, March 19th, gave his decision in the case in which John Barrington, 106, Church Street, Newton Heath, was summoned for paying, on behalf of the Culcheth Burial Society, of which he was treasurer, £2 12s. to one of the members of the society, named Jonathan Wild, contrary to the provisions of the Friendly Societies Act. Mr. Cobbett appeared on behalf of the prosecutor, Mr. William Lockett, registrar of births and deaths, Newton Heath; and Mr. Cottingham (instructed by Mr. R. Hankinson) was for the defence. The case for the prosecution was heard on the 1st of March, and on that occasion Mr. Cobbett said that the information charged the defendant that he, being connected with the committee of management of the Culcheth Burial Society, did pay £2 12s. to one Jonathan Wild on the death of his child, who was under ten years of age, without receiving from the registrar of births and deaths a

certificate containing particulars mentioned in the Friendly Societies Act. Mr. Cobbett contended that a society of the description of that in question came under the provisions of the Friendly Societies Act, and that the defendant, as the treasurer of the society, was liable to a penalty for having paid the money without the production of a registrar's certificate, as specified by the Act. Mr. Cottingham said the Culcheth society was not registered, and he held that the clauses in the Act relative to the granting of the certificate did not apply to any but registered societies. The Culcheth society, being an unregistered society, did not ask for any of the privileges provided under the Act, and it would be monstrous if they had to be liable to the penalties.

The Stipendiary said this was a summons taken out under the 3rd sub-section of the 28th section of the Act passed for the consolidation and amendment of the law relating to friendly and other societies, and charged John Barrington that he, being a member of the committee of management of the Culcheth Burial Society, did improperly pay the sum of £2 12s. on the death of a child which was under the age of five years, in contravention of the sub-section of the above-named Act. It was evident from the title and the preamble of the Act that it was intended to apply to friendly societies generally, and further to other societies, and partly to industrial assurance companies. Since the day when the matter was argued before him he had looked as carefully as he could through this Act, and he perceived that a large number of the sections related in terms to registered societies only. From the 14th section to the 29th the Act in definite terms was extended only to registered societies, but he perceived that in two sections the Act was explicitly defined that such sections should apply to both registered and unregistered societies, and that in other sections—and it was so with regard to the 28th section with which they were immediately concerned—the word society was used without any definition. In order to find the extent of the word society in that section, they were called upon to consider the presumable intention of the legislature in enacting that section and its sub-section, and also to carefully consider the section itself, and all its sub-sections, and endeavour to see what definition was the more reasonable. It seemed to him that the first sub-section of the Act, which was not the one under which the charge was laid, afforded a very striking proof of the meaning of the word society throughout the whole section and sub-sections. The first sub-section stated, "No society shall insure or pay on the death of a child under five years of age, any sum of money, which, added to the amount payable on the death of such child by any other society, shall exceed £6, or on the death of a child under 10 years of age any sum which, added to the amount payable on the death of a child by any other society, shall exceed £10." If they were to read the words "no society" in a particular sense as meaning registered societies in the first line of the sub-section, he could see no reason why they could not attach the same particular meaning to the words when they were employed in the fourth line or "any other society," and in the concluding portion of the section, which referred to the child not exceeding 10 years of age. Let them see the effect such a definition would produce. A society would be precluded from making any inquiries as to any payment which had been made by any other society except that society was a registered society, which appeared to him to limit the inquiry to a very undesirable and mischievous extent. Again, looking at the 5th sub-section, they saw that it stated "any inquiry to be made by any society which has produced the certificate of the death

of a child which does not purport to be the first certificate shall, before paying any money thereon, be bound to inquire whether any of the sums of money have been paid by any other societies." The same reason applied to the 5th sub-section; and in that case they could not entertain any inquiry unless it appeared that the payment had been made by a registered society. If that was so it would appear to defeat the object of the enactment that such inquiry should be made. Again, the provision that the word society should include all industrial assurance companies seemed to have a bearing upon the argument, because it was clear that those provisions of the Act were of a comprehensive and enlarging nature altogether, inasmuch as they went beyond the scope of mere friendly societies, and carried the operation of the law even to industrial assurance companies, which were not so completely the subject of the Act as friendly societies. It might be asked, if the legislature intended that the word society should be used in a particular and not in a general sense, why had they in the 26th section used the words, "all militiamen or volunteers shall not lose or forfeit any interest or benefit in a registered or unregistered society." They found inconsistencies occurring so frequently in Acts of Parliament that they had not sufficient weight to warrant a conclusion being arrived at on the subject. There was another section in which the same thing occurred. In the third sub-section of the 30th section the provisions were applied to friendly societies whether registered or unregistered, and to industrial assurance companies. Under the circumstances, that word "society" being defined in two sections did not make it conclusive that the legislature, in abstaining to define it in the 28th section, intended that the Act should only apply in the case of registered societies, because if that was the case there would be an effect clearly at variance with the intention of the legislature in forming these sub-sections. With respect to the privilege of registered societies that they should get certificates for the sum of 1s. each there was no difficulty whatever, as in the 28th section the privilege was conferred upon all societies. He had given this matter all the consideration he could, and he thought he need not travel beyond the 28th sub-section to satisfy himself that the section in question applied to all societies whether registered or unregistered; therefore the summons in the case must be supported. He did not apprehend there was any desire in bringing the matter forward to harass the society by asking for the heaviest penalty.

Mr. Cobbett said a nominal penalty would be quite sufficient.

The Stipendiary then fined the defendant 20s. and costs, with the alternative of one month's imprisonment, and allowed costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 61.

CASE 162.

IN THE COURT OF APPEAL.
1889.
Nov. 4.
Dec. 19.

SWAINE *v.* WILSON AND OTHERS.

Friendly Society—Illegal Rules—Restraint of Trade—Trade Union Act, 1871 (34 & 35 *Vic., cap.* 31), *secs.* 2, 3, 4, 23—*Trade Union Act Amendment Act*, 1876 (39 & 40 *Vic., cap.* 22), *sec.* 16.

Where the general objects of a society are legal, as in the case of a provident society the object of which is the relief of members when

disabled by age or accident or when out of employment, the fact that some of its rules are illegal as being in restraint of trade does not constitute the society an illegal society, or prevent a member recovering a sum of money payable to him under a rule of the society which is not illegal.

Rules made for the *bonâ fide* purpose of protecting the funds of such a society from claims, which may be avoided, are not illegal because they are incidentally to some extent in restraint of trade, provided that their provisions go no further than is reasonable and necessary for that purpose.

CASE 163.

HULL COUNTY COURT. 1894. *Feb.* 7.

GRAND UNITED ORDER OF ODDFELLOWS *v.* VILLAGE PRIDE LODGE.

Friendly Society—Payment of Levies—Rules—Secession—Injunction granted restraining Lodge from acting in disobedience of the Rules.

His Honour Judge Bedwell had before him in the Hull County Court, on Wednesday, an action, the principle involved in which was the right of the Village Pride Lodge, Humber District, of the Grand United Order of Oddfellows, to secede from the district. The amount claimed was £25 5s. 9d., being the aggregate of two levies made by the district upon the lodge. The plaintiffs, who were represented by Mr. J. T. Woodhouse, were Messrs. Mark Taylor, Chapel Lane, Hull, printer; William Thompson, Louis Street, gentleman; Daniel Winn, Mason's View, Cumberland Street; Richard Norton, Clifton Street, fishmonger; and Edward Leonard, Beverley Road, trustees of the Humber District of the G.U.O.O.F. Friendly Society. Mr. Locking (Locking and Holdich) represented the defendants, who were Joseph Dennett, Swanland; and John Atkinson, Tranby Croft, trustees for, and on behalf of, the Village Pride Lodge, No. 602, Humber District, G.U.O.O.F. Mr. Woodhouse stated that the defendant lodge applied in January of last year to the plaintiff district for permission to secede from the district, the only members voting for the application being the two delegates from the Village Pride Lodge. Having been refused their request, they came to the conclusion not to pay any further levies. In the month in which the district refused their application the secretary of the Village Pride Lodge sent in the usual return of members, and the two delegates were parties to the levy it was decided to make by the committee of management. The instalment due from the Village Pride Lodge on the 3rd May was not paid, nor was the subsequent one, both of which made up the amount now claimed. The refusal to pay the amount due on the 3rd May was the first intimation which the plaintiff committee had of the defendants' intention not to comply with the payment of the levies. On the 31st May the district secretary wrote to the defendants, asking the reason why the district levy due from the lodge had not been paid, and pointing out that the lodge was liable to suspension in consequence. To this a reply was received from the secretary, stating that the Village Pride Lodge preferred suspension to the payment of any more levies. It was decided in the event of the trustees of the Village Pride Lodge

failing to pay the levies due, to apply to the County Court for the enforcement of the same under the Friendly Societies Act. Mr. Woodhouse said nothing had been received, and therefore this action was now brought. He had also to apply for an injunction to restrain the Village Pride Lodge from acting in disobedience of the rules, or as otherwise than as a branch of the Humber District of the G.U.O.O.F., and also from applying their funds other than as a branch of such district. The Village Pride Lodge was worth some £1,200, and was one of the pillars of the district. His Honour the Judge, after hearing evidence, granted the injunction as prayed, with costs.

CASE 164.

COURT OF QUEEN'S BENCH.
BLACKBURN, J.
QUAIN, J.
AND
ARCHIBALD, J.
1873.
April 23.

BURTON (APPELLANT); EYDEN (RESPONDENT).

Friendly Society—"Sickness"—Insanity.

By the rules of a friendly society, after payment of a year's subscription, "any member shall receive 8s. per week during any sickness or accident that may befall him, unless by rioting or drunkenness."

Held that insanity was "sickness" within the meaning of the society's rules.

Case stated by justices of Northamptonshire, under 20 & 21 Vic., c. 43.

An information was preferred by the appellant (as parent and next friend of Samuel Burton, a member of the Stoke Bruern Friendly Society), against the respondent, as secretary of the society, for that Samuel Burton, a member of the society, was then insane and an inmate of the Northampton General Lunatic Asylum, and, as such, sick and entitled to relief from society, which relief has been refused him.

At the hearing, on the 2nd July, 1871, a copy of the rules was put in.

Samuel Burton was and is a member of the society. He declared upon the sick funds of the society by sending a certificate to the trustees, signed by James Parsons Knott, of Blisworth, the usual medical officer of the society, as follows:—"April 30, 1872. This certifies that Samuel Burton is unable to follow his employment from general weakness and disease of the mind."

Burton was shortly after the date of the certificate confined as a lunatic at the Northampton County Lunatic Asylum, where he still remains confined as a lunatic. Burton has not by himself or his friends received any pecuniary aid from the society, and the society have refused to make any such payment.

It was admitted that all proper notices of illness had been sent on behalf of Burton to the society.

The justices being of opinion that insanity was not a sickness which entitled the members to relief from the society under its rules, dismissed the summons.

The question for the court was whether the above facts justified the dismissal of the summons or not.

Mr. Metcalfe, Q.C., for the appellant, contended that insanity was sickness within the rules of the society. He referred to rules 11 and 13, and cited Regina *v.* Manchester.

Quain, J., referred to the preamble of the rules.

The court called upon

Mr. Edmund Thomas for the respondent. He referred to the terms of the Act, 18 & 19 Vic., c. 63, s. 9, sub.-s. 2, "old age, sickness, or widowhood."

Blackburn, J. : I am of opinion that lunacy is sickness within the meaning of the rules of this society. If we look at the terms of the Acts they speak of sickness, old age, and widowhood, and it is quite clear that mere temporary sickness is not what is contemplated ; and I see nothing in the rules themselves that confines the relief to temporary illness ; and rule 11 shows that the society contemplated relief at all events that would not be temporary, but might last over months.

Insanity depends on the state of mind and body of the person.

The Poor Law cases proceeded on Acts passed with a different object from that of friendly societies, by which it was enacted that a pauper should not be removed if his chargeability were owing to such sickness or accident as would *primâ facie* be only temporary ; and the question arose whether insanity came within the meaning of sickness for this purpose, but no absolute decision has been come to, though it seems to have been assumed that lunacy was sickness. It certainly seems to me that lunacy is a sickness affecting the health of the body in such a way as to prevent a man's ability of earning his livelihood. If it were not the intention to include it, the rules of the society should be framed so as expressly to exclude it.

Quain, J. : I am also of opinion that insanity is sickness within the society's rules. The preamble of the rules is wide enough to include it ; the words of rule 13, entitling the members to relief, are "during any sickness or accident," except certain excluded cases, insanity not being one. There is nothing to show that temporary illness only was contemplated, and if we look at rule 32, that seems to show that blindness was intended in general to be included, as it exempts it in particular cases, and blindness is certainly not temporary in most cases.

Archibald, J., concurred.

Case remitted to the justices accordingly.

CASE 165.

LIVERPOOL COUNTY COURT. 1890. *July.*

CHURCH *v.* THE GREAT SOUTHERN SICK AND BURIAL SOCIETY.

Friendly Society—Rules—Insanity a bodily sickness.

The following extract from the judgment of Mr. Sergeant Wheeler, in the Liverpool County Court, in the above case is interesting, as showing the medical aspect of the question whether insanity is or is not a bodily sickness:—It is necessary in considering the question to bear in mind the natural and essential relations of mind and body.

Every manifestation of mind in this life is made by and through its bodily organ, the brain, and the mind is so influenced by the brain that the condition of the former is an invariable index to the constitution and condition of the latter. Hence all causes of temporary or permanent disturbance in the health of those parts of the brain that manifest the mind produce in the same degree the signs of mental derangement, and, *vice versa*, all symptoms of mental derangement indicate a proportionate disturbance in the sanitary state of the mind's bodily organ, the brain. Some years since, when it was a common circumstance to examine the brain with the aid only of the naked eye, it was not possible in many cases to discover those lesions of brain structure which produce and accompany insanity. But now, by the recent application of the microscope, the minute structure of the brain is revealed, and pathologists can trace distinctly the very seat and nature of those morbid changes which are the real essence of insanity. Hence, Schroeder Van der Kolk, an eminent German anatomist, says that "he does not remember to have "performed the dissection of one lunatic during the last twenty-five "years without finding a satisfactory explanation of the phenomena "observed during life." If we glance back to the year 1831, when Dr. Andrew Combe published his work on mental derangement, we find this principle laid down: "Every derangement of function is accompanied "by disorder either in the structure or mode of action of the organ which "performs it, and without the removal or cure of which the functions "cannot be restored to its healthy state." The same author observes: "Sight is never impaired or hearing destroyed unless the organs which "execute these functions are diseased, and in like manner thought and "feeling are never deranged unless the cerebral organs by which they "are manifested have undergone some morbid change." The latest expression of authoritative opinion upon this subject is by Dr. Maudesly, in his Gulstonian Lectures, "On the Relations between Body and Mind," delivered at the Royal College of Physicians. That gentleman thus speaks: "I have given a survey of the physiology of our mental "functions, showing how indissolubly they are bound up with the bodily "functions, and how barren must of necessity be a study of mind apart "from body. I now propose to show that the phenomena of mental "derangement bear out fully this view of its nature, that we have not "to deal with disease of a metaphysical entity which the method of "inductive inquiry cannot reach, or the resources of medical art touch, "but with disease of the nervous system disclosing itself by physical and "mental symptoms." It seems then that the question in this case is concluded both by reasoning and medical testimony, and it appears to me that insanity is just as much bodily disease as paralysis and apoplexy, which are notoriously affections of the brain, and therefore admitted to

be bodily disease. It has been suggested, I see, in the *Lancet*, that in cases of insanity the right of relief out of the sick funds ought, on account of the usually chronic character of the malady, to be made subject to a special limit in point of time. That matter I leave to others to whom its decision properly belongs. All that remains for me to do is to give effect to the conclusion to which, after much consideration, I have come, and to direct that a verdict be entered for the plaintiff for the sum claimed.

CITY SESSIONS COURT. RECORDER OF LIVERPOOL. 1891. *October* 28.

CASE 166.

MOFFATT *v.* **TAUNTON.**

Inspection of Books.

Friendly Societies Collecting Books.—A case of interest to managers and members of friendly societies was investigated before the Liverpool Recorder, at the City Sessions, on October 28th. Mr. Francis H. Taunton, secretary of the Royal Liver Friendly Society, appealed against a decision of the Liverpool Stipendiary Magistrate, who last March fined him 20s. and costs for refusing to allow a member, named Moffatt, to inspect certain of the society's books, as provided by the Friendly Societies Act.—Mr. Moffatt said that in February last he applied at the society's offices to inspect certain collecting books, so as to investigate suspected defalcations on the part of collectors who were relatives of officials. He was told that the committee of management had consulted eminent counsel, who advised that respondent had no legal right to inspect the books. The secretary was summoned and fined. Mr. Moffatt said that under section 14 of the Act any member, or any person, having an interest in the funds of the society, was entitled to see the books during reasonable hours. In reply to the Recorder, he said that he had applied only for collecting books which he knew were in the office at the time.—For the appellant, Mr. Taylor said that the committee were contesting the case in the interests of the holders of these collecting books and the members of the society. Until they had had a judicial decision on the point, the committee thought they ought not to produce these books, and so disclose the private accounts of a member to every other member. The holders of the books, who had a kind of goodwill in them, objected to disclose their accounts and list of members to a person who might belong to another society, or to a rival collector. He submitted that the books referred to in the section were exclusively the books written up at the head office, which thoroughly showed the financial position, investments, etc., of the society, and which Mr. Moffatt might examine.—Having heard evidence, the Recorder decided that any member of the society making application at a reasonable time and in a reasonable manner, should have all the means at hand, provided he was willing to undertake the gigantic task, of inspecting the books. He, therefore, confirmed the conviction, with costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 40.

CASE 167.

CHITTY, J. 1888. *Feb.* 3.

HOLLAND *v.* DICKSON.

Companies' Clauses Act, 1845, *secs.* 45, 63—*Revised Edition Statutes, vol.* IX., *pp.* 572, 576—*Companies' Clauses Act*, 1863, *sec.* 28—*Revised Edition Statutes, vol.* XIV., *p.* 770—*Inspection of Registers of Company—Injunction.*

The right given to holders of stock and debentures by the Companies' Clauses Act, 1845, ss. 45, 63, and by the Companies' Clauses Act, 1863, s. 28, of inspecting the registers of a company, is not confined to an inspection of the names and addresses only of the holders of stock and debentures; may be exercised without assigning any reason for requiring inspection, and can be enforced by an injunction restraining interference by the company with the stockholder in the exercise at all reasonable times of his statutory right, without his being compelled to apply for a mandamus, calling upon the directors to allow inspection.

CASE 168.

COURT OF APPEAL. 1891. *Dec.* 8.

BARNES *v.* THE LONDON, EDINBURGH AND GLASGOW LIFE INSURANCE COMPANY.

Insurance (Life)—Policy—Insurable Interest—14 *Geo. III., cap.* 48, *secs.* 1, 3.

In an action to recover the amount of a policy of insurance upon the life of a child, the plaintiff's step-sister, evidence was given of a promise made by the plaintiff to the mother of the child to take care of the child and help to maintain it. No objection was taken on behalf of the defendants that the plaintiff had not in fact incurred any expenditure in respect of the child.

Held that the plaintiff had an insurable interest in the child's life and was entitled in the absence of any objection as to the amount in fact expended by her to recover the amount of the policy.

CASE 169.

FRY, J. 1881. *July* 8.

IN RE COLTMAN.

COURT OF APPEAL. *Nov.* 5. JESSEL, M.R. BRETT, L.J. LINDLEY, L.J.

COLTMAN *v.* COLTMAN.

Friendly Society—38 & 39 *Vic., cap.* 60—*Powers of investment—Illegal loans.*

The trustees of a friendly society lent out of the surplus funds of the society a sum of £300 to A. on the security of

a joint and several promissory note made by A. and by B. and C. as his sureties. None of the makers was a member of the society. C. having died, the trustees claimed to prove against his estate on the note.

Held by Fry, J., that the loan on personal security to a person not a member of the society was forbidden by the Friendly Societies Act, that the transaction therefore was illegal, and that as C. had not received any money of the society, and the society had no claim against his estate except under the contract, the proof must be rejected.

Held, on appeal, that as it was not alleged that the money was borrowed for an illegal purpose, the contract was not illegal but merely unauthorised; that it was not competent to the makers of the note to allege by way of defence that the payees had no authority to lend the money, and that the proof, therefore, must be admitted.

On the 4th September, 1877, Joseph Marshall, John Marshall, and E. C. Coltman signed and gave the following promissory note:—"On demand we jointly and severally promise to pay Joseph Robinson, Charles Hands, and Mark Ghent, of, etc., the sum of £300, together with interest after the rate of £4 per cent. per annum."

This note was given to secure £300 advance to Joseph Marshall, the other two makers being only sureties. Robinson, Hands, and Ghent were the trustees of the Victoria Friendly Society at Burbage, a society registered under the Friendly Societies Act, 1875, and the £300 was advanced by them out of the surplus funds of the society. Neither Joseph Marshall nor either of the sureties was a member of the society.

Coltman died intestate in December, 1879, and his estate was being administered by the court. Robinson, Hands, and Ghent claimed to prove for the £300 with an arrear of interest. The Chief Clerk having allowed the claim, the personal representative took out a summons to vary the certificate, which came on to be heard on the 8th July, 1881.

Mr. Glasse, Q.C., and Mr. Dunning in support of the summons.

Mr. Ford North, Q.C., and Mr. Woodroffe for the claim.

Fry, J., in giving judgment said: The facts in this case have not been in controversy before me, and they may be shortly stated in this manner. The trustees of a friendly society, known as the Victoria Friendly Society, lent the sum of £300 on a promissory note which was dated the 4th September, 1877. It was given by three persons, one of whom was Marshall, the borrower, and by two sureties of whom one was the intestate in the present action. Neither Marshall nor either of the sureties was a member of the friendly society. It is not in dispute that such a lending was beyond the powers of the trustees of the society, but nevertheless they are seeking to recover against the intestate's estate upon the promissory note so given by him.

The question which has been argued before me is this: was that loan an act merely beyond the powers of the trustees, or was it one which is

unlawful and prohibited by statute? In order to answer that inquiry, it of course becomes necessary to refer to the statute in force with regard to friendly societies. That statute is 38 & 39 Vic., c. 60, sec. 16 provides that, "The trustees, with the consent of the committee of management or a majority of the members of the society present and entitled to vote in general meeting, may from time to time invest the funds of such society, or any part thereof, to any amount in any of the following ways." Then five methods are enumerated, the first four of which have nothing to do with a loan of this description. The last is "upon any other security expressly directed by the rules of the society, not being personal security, except as hereinafter authorised with respect to loans." Then section 18 provides with respect to loans to members in registered societies, that the society may lend in any particular manner to particular members. In terms, therefore, the loan in question is prohibited by the statute, and it is very difficult, in my opinion, to draw any distinction between cases of expressed prohibition, by reference to the motive with which the prohibition may have been imposed by Parliament. In the next place, it appears to me that if I regard the object of the society, that object is inconsistent with loans to persons other than members. The first statute which was passed with regard to friendly societies contains a recital of the objects of such societies which I believe to be substantially correct in the present day, and to have been correct throughout the whole period which has elapsed from the passing of the statute in 1793 (43 Geo. III., c. 54) to the present time. It recites: "Whereas the protection and encouragement of friendly societies in this kingdom—for raising by voluntary subscriptions of the members thereof—separate funds for the mutual relief and maintenance of the said members in sickness, old age, and infirmity, is likely to be attended with very beneficial effects, by promoting the happiness of individuals and at the same time diminishing the public burthens." It is obvious that if some of the moneys to be raised by the subscriptions of the members are to be lent to persons other than members, the relief and assistance will not be of the mutual description which is the main object of these friendly societies, and those societies may easily and almost naturally be converted into institutions for a perfectly different object, and become, in fact, loan societies.

Furthermore, I observe that the subject of the investment of the moneys of these societies has been an anxious subject of legislation from the very first Act passed with regard to friendly societies down to the Act which is now in force. The statute which I have last referred to, and no less than nine of the subsequent Acts of Parliament which have been passed for the regulation of these societies, contain provisions with regard to the mode of investment of their funds, a fact which is enough to show that this subject of investment of the funds has been one of anxious concern to the legislature of the country.

It appears to me, therefore, that I must come to the conclusion that the legislature has for a fixed purpose and design confined the loans to be made by these societies to members of the societies, and that, therefore, a loan made to a person other than a member is a direct violation of the objects of these societies, and of the express statutory provision in force with regard to them.

I think, therefore, that the transaction was one which is illegal, and therefore one on which no action can be maintained.

One other observation only do I desire to make. In the case of Hardy *v.* Metropolitan Land and Finance Company, the Court of Appeal gave relief to a friendly society as against a person who had borrowed money from the society in violation of the restriction to which I have referred; but that case appears to me to be perfectly different in principle from the present. The money in that case was the money of the society, independent of the illegal transaction, and accordingly the Court of Appeal held that, it being trust money, and trust money in the hands of the defendants, it could be recovered by the plaintiff. Here, but for the illegal transaction, there was no relation whatever subsisting between the claimant and the intestate. The whole right against the intestate's estate arises out of the transaction which I hold to be illegal. There is no antecedent right to this property in the hands of the intestate, and, consequently, I hold that the claim cannot be substantiated. I therefore vary the chief clerk's certificate in the manner I have indicated.

The trustees of the society appealed. The appeal came on to be heard on the 5th November.

Mr. Horace Davey, Q.C., and Mr. Woodroffe for the appellants.

Mr. Glasse, Q.C., and Mr. Dunning *contra.*

Jessel, M. R. : This is an appeal from the decision of Mr. Justice Fry, and I must say, with the greatest possible deference to the learned judge, that I am unable to arrive at the conclusion at which he arrived.

The claim is on a promissory note payable by three persons jointly and severally to three persons as individuals. There is no dispute that the consideration was paid, and that the note is unpaid. One of the three makers has died, and, it being a joint and several note, a proof was asked to be admitted against his estate. That proof has been rejected on this ground, that the money advanced was money belonging to a friendly society—that the lenders were the trustees of that society —that the Friendly Societies Act, 38 & 39 Vic., c. 60, makes a lending of money on a personal security to persons not members of the society an illegal act, and consequently that the trustees are not entitled to recover this money as against the estate of the maker who has died. Now it appears to me that there is nothing in the Act to make the contract illegal. The Act says that the trustees, with the consent of the committee of management or a majority of the members of the society, may lend the money of the society on certain securities, not including personal securities, but there is nothing in the Act which directly or indirectly prohibits the lending on personal security beyond the fact that it gives the trustees no authority to do so, and that their doing so would therefore be a breach of trust. I cannot find anything in the Act which would prevent all the members from effectually authorising a loan on such security, though a mere majority could not do so. There is, therefore, nothing that I can find in the Act of Parliament which makes the loan illegal, and it seems to me that the ground for the decision fails.

I am not satisfied that an express provision in the Act of Parliament that the trustees should not lend money upon personal security would have made any difference. The loan would have been wrong, it would have been an appropriation of the society's money to their own use, but

there would not have been any such illegality in the transaction as would preclude the trustees from recovering the money lent. It seems to me that to hold it to be incompetent to maintain an action under those circumstances would be to say that it was incompetent for a trustee who had improperly appropriated the money of the society and lent it in his own name to take steps to enable him to restore it. How the persons who borrowed it, there being no illegality in the borrowing on their part, and no illegality in their agreeing to repay the money so borrowed, and no illegality in the purpose to which they were intending to apply it, can set up the doctrine that they are relieved from their liability by reason of the money having originally belonged to a friendly society, is a thing which I am quite unable to understand.

It appears to me, therefore, that the decision appealed from cannot be sustained, and the appeal must be allowed.

Brett, L. J. : The learned judge has held that this contract is an illegal contract, and has applied to it the ordinary rule of law that no person can sue in a court of law or equity upon an illegal contract. It is said that the Act, 38 & 39 Vic., c. 60, s. 16, prohibits such a contract, and thereby makes it illegal. It seems to me that this section is not a prohibitive but an enabling section. The appellants are trustees of a friendly society. They have not, by virtue of their office, any authority at common law to lend the money of the society at all, and they required a statutory authority to enable them properly to do so. That authority is given to them in this 16th section, but only under certain circumstances and subject to certain rules. It seems to me that the section does not give them authority to lend to strangers on personal security, and such a loan could not be sanctioned except by the authority of all the members, the consent of a committee or of a majority of members not being sufficient. This section, therefore, shows that the money which was the consideration for the promissory note, in this case was lent by the trustees without authority. But does it follow that because the money is lent by a person who has no authority to lend it, therefore that contract is an illegal contract? It seems to me that it does not follow.

The only objection to this loan is that it was made without authority. But it does not seem to me that the borrower can set up as a defence to an action that the person who lent him the money, and to whom he has made a promise to repay that money, had no authority to lend it to him. That is an objection which it is not for him to take. The contract is, if you will lend me so much money I will pay you that money back on demand. The consideration is the handing over the money. That is not illegal. The promise to pay back money which you have borrowed is not illegal. The money was not borrowed for any illegal purpose, in order to do an illegal or immoral thing, and I cannot see that there is anything illegal in the contract. The only objection is, that those who made the contract with the debtor had no authority to make it, and that is an objection which he cannot take.

The cases referred to by the respondent do not, in my opinion, support his contention. The case of Ashbury Railway Carriage and Iron Company *v.* Riche only decides that if the directors of a company assume to make a contract on the part of a company which neither the directors nor the company have authority to make, that contract cannot be enforced against the company; and, moreover, that it is so void from

the beginning that it cannot be ratified by the company so as to make them liable. But the House of Lords did not hold that if money had been lent by directors without authority the money could not have been recovered, or that the borrowers could set up the defence that those who lent them the money had no authority to do so. In Stevens *v.* Gourley the subject matter of the contract was the building of a house. The contract was, "If you will build me a house of a particular construction I will pay you for it." But to build a house of that particular construction was an illegal act, therefore the consideration for the payment of the money was the doing of an illegal act. The subject matter of the contract there was illegal, and that case, therefore, has no bearing upon the present. Under these circumstances, I am unable to agree with the learned judge whose judgment is appealed from. He proceeds on the ground that the contract was illegal, whereas, in my opinion, the only objection is that it was made by persons who had no authority to make it, and that is an objection which the makers of the note could not take.

Lindley, L.J. : I am of the same opinion. This is a claim on the part of three gentlemen to be admitted as creditors against the estate of a gentleman of the name of Coltman, who, together with two other persons of the name of Marshall, has signed a joint and several promissory note, by which the makers of the note promise jointly and severally to pay to the payees the sum of £300, with interest at 4 per cent. The objection taken is that there is some illegality in that promise to pay. The reason given for holding it illegal comes at most to this, that the payees got from an improper quarter the money which they lent. It cannot be put higher than that. It cannot be carried to the extent that there is anything illegal in the promissory note. There is nothing illegal in the promise and nothing illegal in anything except that the money was got from a place from which the payees had no right to take it. To say that this makes the contract to repay the money an illegal contract is quite new to me, and no authority has been cited to that effect. It appears to me, upon principle, that the mere fact that they got the money from a place from which they had no right to take it does not in any way invalidate the promise to repay it on demand. I am of opinion that the appeal must be allowed.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 44.

CASE 170.

SNELL *v.* VINE.

HIGH COURT OF JUSTICE. QUEEN'S BENCH DIVISION. 1890. *April* 19.

Friendly Society—Liability of Juvenile Society to pay expenses of establishing and maintaining Medical Aid Association — Arbitration — Award — Dispute not in the nature of dispute between member and society—Arbitration failed—Expenses not necessary to carry on the business of the society—Rules—Judgment for defendants.

The case of Snell and others (trustees of the Bury St. Edmunds Medical Aid Association) *v.* Vine and others (trustees of the Bristol Juvenile Society, formerly the Bury St. Edmunds No. 1 Juvenile Society,

in connection with the Manchester Unity) was heard in the Queen's Bench Division of the High Court of Justice on April 19th, the action having been partly heard at the Ipswich Assizes and adjourned to London for further argument. Mr. Poyser, instructed by Mr. C. E. Salmon, Bury, appeared for the plaintiffs; the defence was in the hands of Mr. Horne Payne, instructed by Messrs. Woolnough Gross and Sons, Bury.

Mr. Poyser explained that the plaintiffs, Mr. Robert Snell and others, were the trustees of the Bury St. Edmunds Friendly Society Medical Aid Association, and the defendants, Mr. William Vine and others, trustees of the Loyal Bristol Lodge, Juvenile Oddfellows, Manchester Unity. The action was brought to recover a sum of £156 5s. 10d., on three grounds:—First, as the amount which was directed to be paid by the defendants to the plaintiffs under an award dated April 2nd, 1889; secondly, as the sum which was due from the defendants as their share of a deficit in the funds of the Medical Aid Association at the time of the defendants' notice of withdrawal therefrom; and finally, as the amount which was due from the defendants under the rules of the Medical Aid Association. The defence set up was that there was no dispute between the Medical Aid Association and the defendants within the meaning of the rules of the association, that the defendants made no submission to arbitration, that the defendants never were members of a registered branch of the association, that if they ever were members they had ceased to be so at the time the deficit in question arose, and that the defendants were trustees, under the Friendly Societies Act, of a lodge, the members of which were infants, and the deficit was not incurred for necessaries supplied to them. As to the first point in the defence, the rules required that in the event of a dispute five arbitrators should be appointed. The arbitrators were duly selected, and they made their award, from which the defendants now sought to escape on the suggestion that they were not "members, or persons, or a registered branch of the Medical Aid Association;" but he submitted that they could not be allowed to so escape. Formerly there were four or five different societies at Bury St. Edmunds, each of which had a medical officer; but ultimately they all joined together in order to have one medical officer to attend to their combined interests. When that took place, instead of each individual member coming into the management, each society was allowed to appoint representatives to take part in the government of the Medical Aid Association. As a matter of fact, what had really given rise to the present difficulty was that it was resolved to borrow money on mortgage in order to buy a house for the medical officer; and he contended that the defendants having agreed to act through their representatives, who took part in the borrowing of the money, it did not lie in their mouths now to repudiate the liability sued upon. The plea of infancy was an extraordinary one, and he did not imagine for a moment that it would have any weight with the court. Mr. Poyser proceeded to argue the case for the plaintiffs at length. He said that one way the defendants wanted to get out of their liability was by saying that their society at that time was not a registered branch, but he (Mr. Poyser) did not for his purpose want to suggest that it was.

His lordship: The point is whether they can be properly described as a member or person claiming under the rules of the association.

Mr. Poyser: And I submit that they are members.

His lordship: Not that they are, but that the society is a member.

Mr. Poyser: Yes, my lord, the society is a body which is practically a member of the Medical Aid Association. The learned counsel proceeded to say that there were various rules provided for the government of this society, and the defendants came under those rules, and joined the society in that way. There was no necessity whatever for their being a registered branch in order to bring them within the rule for the government of the society. He did not say that they were not a branch in one sense, but he did not profess that they were a registered branch; but they were a branch of the Medical Aid Association, and were represented at the society's meetings by certain officers who actually took part in the resolution by which it was resolved to purchase the property in question; therefore it did not lie in their mouths to come forward now, simply because they had changed their name, and say they were not liable.

Mr. Horne Payne said his society never sent a delegate to the society's meetings.

Mr. Poyser said he quite understood where his friend was, he was setting up a distinction between his society under its present name and the name it had formerly, when it was the Bury St. Edmunds Lodge, No. 1 Juvenile Oddfellows, but he (Mr. Poyser) would show that it was one and the same society, notwithstanding the change of name. Mr. Poyser then referred to the Juvenile Society's rules, and said that although the Loyal Bristol Lodge was not registered till 1884 or 1885, their rules stated that they were established in 1877, which was, as a matter of fact, true, the only difference being that they had altered their name to the Loyal Bristol.

Mr. Horne Payne contended that the Loyal Bristol was not one and the same with the No. 1 Juvenile Oddfellows' Lodge. The membership of the old society was, of course, fluctuating from year to year, and ultimately, in 1885, another society called the Loyal Bristol was formed. It was true that it was composed of the individuals that up to that time had survived for the former lodge and others. In a general sense it was established in 1877, in so far as the former society was then established, but in fact it was not the same society at all, and the society he (Mr. Payne) was then representing could not by any possibility be liable for what was done by the former society. The present defendants were members of the Loyal Bristol Lodge, and the persons affected were members, but not one of them was ever a member of the No. 1 Lodge.

Mr. Poyser: This Loyal Bristol Lodge is trying to get off under an *alias*. My friend wants to say that because they have altered their institution in some slight particular, that they are essentially a different body, and therefore are not liable. That looks like trying to get off under an *alias*. They try to set up a different name for the purpose of escaping their liability.

Mr. Poyser, continuing, proceeded to explain the reason why the Medical Aid Association was established. When each of the several societies joined, instead of each member of the societies taking part in the management of the Medical Aid Association, each of the societies was allowed to appoint its own representatives, and the representatives of the old society were the really active people in the establishment of

the Medical Aid Society, and also took a most active part in its business. The object of the society was a perfectly legitimate one, and the members of No. 1 Lodge having agreed to act through their representatives properly appointed, it did not lie in their mouth now to say, "Oh, you cannot sue us in a body, though we have always acted in a body; you must deal with each individual member separately." Such a position was quite contrary to the rules. Section 3 of rule 3 of the plaintiffs' society stated that representatives should be appointed by the respective societies or branches in January of each year, and should hold office from the 1st of February to the 31st of January inclusive. These representatives were actually appointed by the old society, and they took part and voted upon a resolution for the purchase of a house for the medical officer. Proceeding, Mr. Poyser said there were two sets of members of the Medical Aid Association; there were the societies or branches themselves, and in addition, members of any friendly society or branch not contributing to the funds of the society might be admitted upon payment of a certain sum per annum. But, as a matter of fact, they had no such members. Mr. Poyser referred to, and explained several of the rules at length, and said that under rule 18, if any dispute arose between any member or person claiming under the rules of the association and the officers of the association, it was to be referred to arbitration, and he argued that a society or branch was for this purpose a person claiming under the rules of the association.

A long argument having taken place on the point of membership, the facts relative to the withdrawal of the society from membership in the Medical Aid Association were detailed, it being stated that the resolution to withdraw was passed on August 28th, 1888, the society having intimated that they had decided to discontinue the Medical Aid Surgeon, and intended to pay for the half-year up to Christmas.

His lordship: And that was answered by an acknowledgment of the cheque for the amount received, and an intimation that it was accepted without prejudice to any further claim which the Medical Aid Association might have on the lodge.

Mr. Poyser: And up to that time they contributed exactly in the same way as they had from the commencement, except with some trifling alterations as to the amount each member was to pay. In 1884 it took a new position which it had not before, but I say there was no change as far as liability was concerned. There would be no change merely because their rules were registered in 1885, and I submit that we are not bound by rules which were not brought distinctly to our knowledge.

His lordship: I don't think you can say you had no knowledge of them, for in one sense you referred to them, and your rules took notice of them.

Mr. Poyser was of opinion that if the Loyal Bristol took over the liabilities of the old society they could not get rid of them simply because they altered their name, and called themselves something else. When they changed their name all the old members, in a body, and, in addition to that, all the funds were taken over. The officers were the same, and the list of members subject to the natural fluctuation of membership was the same. They had the same secretary and the same

place of meeting. Their rules were practically similar in each case; and they certainly could not get out of their liability by merely changing their name. It would be suggested, perhaps, that rule 25 of the old society was not wide enough to cover the incurring of the expense necessary to purchase a house for the medical officer.

His lordship: What is there to show that it is necessary to provide such a house?

Mr. Poyser said the necessity was shown by the fact of their having done it, and it did not lie in the mouths of the defendants, having by their representatives taken part in the purchase, to come now and say it was not a necessary expense.

His lordship: I should say that *primâ facie* all the rules of the society are directed to the payment of a medical man; the maintenance of a medical man who is practising in the neighbourhood, and who had a practice of his own, and not to the purchasing of a house for him.

Mr. Poyser: That is the way it is usually done, but the society may resolve on some other way of appointing a medical officer; they may club together to get a man to attend to their patients solely, and accordingly buy a house for him. A medical practitioner in the town might lie under the suspicion that he would attend to his own patients first, and therefore it might be desirable to buy a house for a medical man who was not a practitioner in the town.

His lordship: It might be desirable, but I cannot see how it is necessary, especially where they contemplate a different state of things as in the rules.

Mr. Poyser said that rule 8 of the defendants' society stated that the funds were to be devoted to meet all sick and funeral claims and other demands, which might include the purchase of a house.

His lordship: It is very doubtful whether the rule referred to would enable them to buy a house for a surgeon.

Mr. Poyser: Oh, yes.

His lordship: Well, then, is it necessary?

Mr. Poyser, in the course of further argument, contended that the funds might be used for any object within the scope of the society, and they used them in this case in buying this house, as they wanted medical attendance which should be wholly devoted to themselves. As long as they had funds in hand, those funds were valid for the expenses incurred in this way.

Mr. Horne Payne said that if his society were ever so much a member, which he denied, the plaintiffs had no right to sue them for a contribution to their debts. Originally the defendants were an unregistered society, and although they might have agreed to pay a "whip," there was no legal liability on the part of the committee to sue the individual members for anything but that which the individual members had agreed to pay. The sum which the plaintiffs borrowed on mortgage to purchase the house in question was borrowed before the defendants were a registered society, and if liability was to be fastened on them it must be by reason of their

acts or the acts of their agents, and they, as a matter of fact, had taken no part in the business of borrowing. Mr. Payne quoted cases in support of his contention. So far as the defendants were concerned, they had paid every farthing they had promised to pay, quite apart from the question of *ultra vires* as to whether the committee had power to bind the society to any such act as that alleged against them. They passed a resolution on August 28th, 1888, to discontinue the Medical Aid Surgeon, and to pay for the half-year expiring at Christmas, 1888, and they accordingly did pay the sum of £11 or £12; £11 12s. 6d. being the precise amount. From the 31st December, 1884, no member of their committee attended the committee meetings of the Medical Aid Association, and no delegates were elected to attend, and, as a matter of fact, they took no part in the management of the association, and received no notice from the secretary, not even a notice of the important step taken by the plaintiffs' society as to the sale of their goodwill on the surgery. Mr. Payne contended that there was no power to devote money to the purchase of a house for the surgeon; the money was to be devoted to the payment of a medical man and the necessary management expenses, and there was no power to devote to such a purpose as buying a house. The secretary had admitted at Ipswich that there was no rule—and there was no rule—by which any member could be called upon to pay more than he had stipulated to pay, and that was provided for in the rules.

His lordship: I am with you there, and that really disposes of the case.

After further remarks by Mr. Payne,

His lordship intimated that he saw no reason why he should not at once give his decision in the case. He did not think the claim was one which could be supported, and he supposed it was only because it was thought that the defendants had not acted quite so generously as the other affiliated societies that the case had been kept alive so long. The claim was put upon two grounds at least. It was first said that there had been an arbitration in accordance with the rules, under which both societies were bound, and that as the arbitrators were regularly appointed the defendants were liable for the amount which had been awarded, although they declined to join the arbitration. The defendants were sued as trustees of the Juvenile Society, and whether they were liable depended, first, upon whether the words "member or person" in the rules included a society such as theirs. He did not think that that was the rule at all. He did not think it was intended that there should be an arbitration of this kind except in matters which were really in the nature of disputes between the members themselves in a particular society—not between two societies such as these were. Therefore the claim on the ground of the arbitration failed. Next, it was urged that the trustees of the Juvenile Society were liable because the society was liable under an arrangement which was come to a long time ago that there should be a contribution of so much per head towards the necessary expenses of the parent association. Now, he was of opinion that that was not the reading of the rules, and, looking at the whole of the history of the matter, there was nothing to bind the defendants to remain for ever members of the parent association, or to do more than they had a right to do under their own rules. It must not be assumed that there was power to bind the defendants to do anything that was not strictly

within the rules of either society. There was no doubt as to what were the expenses towards which the plaintiffs sought to make the defendants contribute. They were debts incurred a long time ago for the purchase of property for the convenience of the doctor; they were not necessary for carrying on the business of the societies—certainly not for that of the Juvenile Society. All that the defendants undertook to do so long as they were parties to the arrangement with the parent society was to pay so much per member for the benefit which they were to receive. They were not bound to adhere to the arrangement for ever. They paid for the services they received up to a certain date and then discontinued. That did not satisfy the plaintiffs, but they wanted the defendants to contribute towards the debt incurred for obtaining a house for the doctor. The rules of the defendants' society contemplated no such thing, but rather that the doctor should have a house on his own responsibility, not at their expense. He read the rules as contemplating a case in which the surgeon was to have a house as his own residence, and all that the defendants stipulated for, and were entitled to get, were the services of the surgeons; it was not contemplated that a house should be purchased, to be paid out of the funds of the societies—this did not fall within the bargain which was made, and which bargain had been performed by the defendants in what they had done. Therefore the present action must fail, and he would give judgment for the defendants with costs, not against the plaintiffs personally, but out of the funds of the Medical Aid Association.

CASE 171.

1872. *Nov.* 9. V.C. MALINS.

IN RE IMPERIAL LAND COMPANY OF MARSEILLES.—WALL'S CASE.

Application for Shares—Letter of Allotment by Post—Denial of receipt of Letter—Completion of Contract.

An applicant for shares in a company denied that he had received the letter of allotment, which was posted in London on the 16th of March, and should have arrived on the 17th; and having written on the 17th recalling his application, applied to have his name removed from the list of contributories.

Held that the unsupported evidence of the applicant was not sufficient to prove that the letter of allotment which was posted had not been received, and that the name must therefore be retained upon the list. The court expressed an opinion that if the letter of allotment had not been received, the contract to take shares would still have been binding upon the applicant as soon as the letter was posted.

Mr. Cotton, Q.C., and Mr. H. M. Williams for Mr. Wall.

Mr. Glasse, Q.C., and Mr. Higgins, Q.C., for the Official Liquidator.

In giving judgment, Sir R. Malins, V.C., said:—

This case certainly seems to raise a question of great importance. There are, in fact, two questions, and they arise in this way: The

present applicant, Thomas Wall, is described as a merchant and draper in a large way of business in the town of Kilkenny. He admits that on the 6th of March, 1866, attracted, as numerous persons were, by the advertisements of this company, he applied by letter, in the usual form of application, for fifty shares, accompanied by £50, being a deposit of £1 per share, and requested the allotment to be made to him. It may be true that the application for the allotment does not say, "You are to send me the acceptance of the offer by post;" but his offer was made by post, and he knew perfectly well that it was the regular settled mode of conducting such business to send the letter of allotment by post. It is, therefore, as plainly an authority for the company to accept the offer by sending him a letter of allotment by post as if he had said, in express words, "The letter of allotment you send to me by post shall be binding on me."

It is not necessary to go very minutely into the evidence. It is well known that the process of allotment here was by a committee of directors, who made the allotment on the 15th of March, and thereupon it was necessary to send out the letters of allotment. In carrying out that task, it became the duty of particular clerks, who were employed for the purpose, to direct the letters of allotment and post them. Now, there is the most distinct evidence that, in the ordinary course of business, amongst thousands of others, there was a letter of allotment for fifty shares, in pursuance of Mr. Wall's application, sent to him by the post on the 16th of March, 1866.

After the decision in Townsend's case and Harris' case, there could be no question as to the fact of his being an allottee if that letter had been received. The ordinary course of post would take it to him at Kilkenny on the 17th. On the 17th he writes a letter, as Mr. Harris did on the 16th, recalling his application. Mr. Harris's letter I held to be too late. Mr. Wall does not write from Kilkenny till the 17th, therefore, there is no doubt in my mind that that was too late. But then he says, "I never received the letter of allotment." Now there are two questions arising—first, did he receive the letter of allotment? If he did, there is an end of all question; if he did not receive the letter, then arises a question, and a most important one, upon which the law is left in a state of doubt and difficulty, namely, whether an offer accepted by letter which is duly posted is binding, although there may have been some miscarriage in the post - whether from the breaking down of a railway train, or the carriage containing the letters taking fire and the letters all being consumed, or the mail packet which carries them foundering at sea, or if from any other cause the letter containing the acceptance of the offer is not delivered—whether the contract can be considered at an end because the letter did not arrive at its destination? That is a question which does not arise in this case if I come to the conclusion that the letter of allotment was, in point of fact, received.

I may say, first of all, that I think there would be very considerable danger, where a letter is proved to have been duly posted and duly directed, in relying upon the unsupported statement of a person who, wishing to get rid of what he finds to be a burthen, says that he never received it, and any such evidence, in my opinion, ought to be received with the greatest amount of caution. I hope it will be understood that I do not mean to intimate in any way that Mr. Wall, against whose respectability not a word has been suggested, intends to misrepresent

wilfully when he says that he did not receive the letter of allotment. But his own statement is this, that he was at Manchester on the 14th, that he there heard a very bad account of the state of this company, the directors being described as everything that was bad short of being murderers. One would have thought, as a man of business, finding that he had made an application on the 6th to become a member of the company, and wishing to get out of it as quickly as possible, would not have left Manchester without writing a letter of recall; and if he had written from Manchester on the 14th it would have been in time to prevent the allotment. Therefore his want of vigilance was such, as a mercantile man, that one cannot feel very much for him. But, having been in possession of this information, he goes back to Kilkenny, and arrives there on the 15th, and does not write to repudiate his offer till the 17th, and in the meantime the letter of allotment was sent, and I cannot entertain a doubt that the letter was duly posted on the 16th, because the clerk swears it was, and it was in the ordinary course of duty that it should have been. I know no reason why the letter addressed to him should not have reached him when all the other letters appear to have reached their various destinations. There has been no question, in all the cases that we have had of this nature, that every letter that went away was duly received, except in Townsend's case, and that was because Mr. Townsend did not give the name of the town in which he lived. With that exception, I have never heard of any of the letters having miscarried. I must, therefore, come to the conclusion that the letter to him was undoubtedly posted in London on the 16th. He says he did not receive it. Now with respect to that, I find his mind in a state of confusion. He does not remember what he did or what it was he wrote; he says he made a copy of the letters, one was written in his own handwriting, and one in the handwriting of his son. I am much inclined to think, looking at the writing, that he is mistaken even in that. But at all events his mind seems to have been in such a state of confusion that I can attach very little importance to his statement about whether he did or did not receive the letter, and there being nothing but his unsupported statement that he did not receive it, I cannot place much reliance on that. If he had brought his clerk or his assistant, or any one to prove that when the post from London arrived on the 17th, there was no such letter as that, there might have been more importance attached to the evidence: but unless I am perfectly satisfied that I can implicitly rely upon the statement of a man in such a state of circumstances, I can only come to the conclusion that the letter must have been delivered, and, looking at all the evidence on both sides, I am of opinion that the letter was duly received. Then, coming to that conclusion, I must treat it as a jury would. If this had been an action, the learned judge in trying the matter would have drawn the attention of the jury to the facts, and would then have said to them, "Gentlemen, it is for you to draw your own conclusion from the evidence, and you will find whether, in your opinion, the defendant did or did not receive the letter of allotment." The jury, no doubt, would have done that which they did in the case of the British and American Telegraph Company *v.* Colson. In that case the court was relieved from any difficulty by the verdict of the jury. Therefore if this were a court of law I should be relieved from the difficulty, because the finding of the jury would have settled the question, and I think I am bound as a jury to come to the conclusion that the letter was received.

I decided in Harris' case that in all cases of contract by letter, the

acceptance of the offer by letter is binding the moment the letter is put into the post. Everyone knows that the moment a letter is put in the post it becomes the property of the person to whom it is sent, and the person sending the letter has lost all control over it. So if A consigns goods to B, directly they are put on board ship they are the property of the consignee, and the consignor has no longer any control over them, except the right to stop *in transitu*, in the event of B's insolvency. Therefore I come to the conclusion that the letter must be treated as having been received, and that conclusion is confirmed by this circumstance, that though this gentleman, writing the letter on the 17th, demands the return of the deposit of £50, he seems to have had so little confidence in the position he assumed that he allowed three years to elapse without again demanding the £50. He may have thought, "Now they have allotted the shares to me, it is too late to repudiate them, I will keep quiet, and if they do not say anything to me, I will not say anything to them." Why did he not write and say, "Let me have my £50 back, and if you do not send it me, I will bring an action against you to recover it?" Therefore, in every view of the case, the only conclusion I can come to is, that this gentleman has not done enough to relieve himself from the consequence of his application, followed by the letter of allotment, and he must, consequently, remain on the list of contributories.

Mr. Glasse asked that Mr. Wall might be ordered to pay the costs.

The Vice Chancellor: I do not see how I can do otherwise, he has entered into the contest and failed in it, and must, therefore, pay the costs in Chambers, and here also.

CASE 172.

COURT OF QUEEN'S BENCH.
1845. *June* 21.
LORD DENMAN, C.J.
COLERIDGE, J.

SKILBECK *v.* GARBETT.

Proof that a letter properly directed has been put into the post office or delivered to the postman raises the presumption that it reached its destination at the regular time and was received by the person to whom it was addressed.

To prove the sending of a letter by plaintiff to defendant: A clerk of plaintiff deposed that he made up the letters of which this was one, and placed them in a box in the room where he sat and that the public postman invariably called every day and took the letters from that box.

Held that such delivery to the postman was evidence for the jury that the letters had gone to the post office.

CASE 173.

ASHTON COUNTY COURT.

GREEN AND ANOTHER *v.* PARTINGTON.

1895. *March* 21.

Friendly Society—Rules—Claim for Levies—Suspension from Benefit—Claim allowed.

At the Ashton County Court, on Thursday, March 21st, 1895, before his Honour Judge Hughes, James Green and John Brickell Archibald, Trustees of the Ashton-under-Lyne District Branch of the Loyal Order of Ancient Shepherds' (Ashton Unity) Friendly Society, were plaintiffs in an action brought against George Partington, a member of the Ancient Shepherds' Pleasure Lodge (389) of the same Order. The particulars of the claim set forth that the plaintiff branch of the Order, being a branch duly registered under the Friendly Societies Act, 1875, claimed to be entitled to payment by the defendants, who constituted a branch of the said society, of the sum of £14 8s. for levies due from them to the plaintiff branch under the rules.

Mr. Cobbett (Messrs. Cobbett, Wheeler, and Cobbett) was for the plaintiffs, and Mr. Roby (instructed by Mr. H. T. S. Clayton) for the defendants. Mr. Cobbett stated that in July of last year the secretary of the defendant lodge rendered, as was his duty, a quarterly account to the district meeting, but when the next quarterly meeting arrived, on the 13th of October, he did not put in an appearance. Instead, he wrote a letter to the chairman of the district meeting in which he set forth some grievance about a sum of £7, and stated that they would not send any more payments to the funds of the Ashton District. He concluded his letter by saying, "If we cannot live without you, we cannot live with you, and so we are going to try what we can do for ourselves." No payment was made for the quarter ending the 30th October, 1894, nor for the quarter ending the 13th of January, and then a letter was sent by the secretary of the district to the secretary of the lodge, stating that if the levies were not paid steps would be taken to enforce the rules. The matter was also reported to the governing body of the Order, and the Corresponding Secretary wrote to the secretary of the recalcitrant lodge and the lodge itself on the subject, stating that both the Confidence and the Shepherds' Pleasure Lodges must pay the levies to the Ashton District. Failing compliance, the present proceedings were instituted.

Mr. Roby said the answer to the action was twofold. In the first place, the plaintiffs had suspended the lodge from benefit.

Mr. Cobbett: Pay the levies, and you come into immediate benefit again.

Mr. Roby said his second point was that his Honour had no jurisdiction, and that the dispute, according to the law on the subject, should be referred to the Arbitration Committee appointed for the purpose of dealing with such matters. These petty squabbles depended upon a number of considerations of which the court of justice could not have any knowledge, and they were best settled amongst the parties themselves.

Mr. Cobbett said this was not a dispute arising within a lodge, but was one between a district and a lodge, and the clause as to arbitration

did not apply. The rule referred to by his learned friend gave the district the right to settle disputes between individual lodges, but neither in word nor in spirit was it intended to give the district the right to settle a dispute between itself and a lodge. To do that it would be to make it the judge in its own case. If his Honour referred to rule 78 he would find that the words were, "should a dispute arise between two or more lodges in the same district." That was to say the larger body was to settle disputes between lodges. It was not reasonable to suggest that the district should arbitrate upon its own dispute with an individual lodge. That was to be left to another tribunal.

Mr. Roby said this was really a dispute between this lodge and all the other lodges in the district.

Mr. Cobbett: That is very ingenious.

Mr. Roby said if he did not object to be tried by the tribunal appointed, namely, the Arbitration Committee, it was not for his friend to object.

After very considerable argument, his Honour said the points raised were undoubtedly somewhat difficult, but he did not think there would be any advantage in his reserving judgment. His strong impression was that rule 78, upon which the defendants relied, did not apply to a case of this kind, and there must be judgment for the plaintiffs.

Mr. Roby: But your Honour has not heard the merits.

Mr. Cobbett: There are no merits.

His Honour: Are you prepared to go into the merits?

Mr. Roby: Certainly. I have simply raised two technical points. There must be no judgment.

Mr. Cobbett: What are we to prove—that you owe the money?

Mr. Roby: You have got to prove that I have any money to pay with.

Mr. Cobbett: Not at all. We want judgment against the trustees of the lodge.

His Honour: Not against them personally, but as trustees. If the lodge can show that it is insolvent and unable to pay, that is another matter.

Mr. Roby said the lodge having been suspended, and had to pay out of its own funds funeral and other benefits which it would have received from the district to the amount of £24, if his Honour gave judgment for £14 the lodge would want judgment against the district for £24.

Mr. Cobbett: If you pay the amount and costs, the suspension ceases at once. All I ask for is judgment against the trustees of the lodge as trustees, not against them personally.

His Honour: I have given judgment for the plaintiffs.

Mr. Cobbett: You give judgment against the trustees as such for the amount claimed with costs?

His Honour: Yes.

CASE 174.

GRIMSBY COUNTY COURT.

1885.
Feb. 13.

GRIMSBY DISTRICT OF THE ANCIENT ORDER OF FORESTERS *v.* COURT YARBOROUGH.

Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap.* 60), *sec.* 22, *Claim by District to recover levies due from Court after suspension from benefits—Rules—Arbitration.*

Held that as the action was not one to enforce the award of the arbitrators the court had no jurisdiction.

In this case the Grimsby District of the Ancient Order of Foresters sued Court Yarborough, No. 623, for £30 11s. 7d. for funeral levies and fines up to July 10th, 1883. Mr. Statham, barrister-at-law, appeared for plaintiffs, and Mr. Mason for the defendants. Mr. Statham, quoted the various rules of the Order under which the claim was sustained, and stated that on 5th April, 1883, the levy in dispute was made by a quarterly district meeting, and became due. Notice was afterwards sent to the court, 623, which had neglected to pay the levy, asking that the money, with a fine of 5s., should be paid on or before July 16th, of the same year, or the court would be suspended under general law 44, section 1. Mr. Mason admitted the title to suspension by the High Court, but not by the district. Mr. Statham said in point of fact the court was suspended on the 25th by the executive council of the Order. The former rules, where not altered by the new rules, continued in force, and they gave the power to the district to suspend. Mr. Mason contended that the new rules had entirely taken the place of the old ones. His Honour sustained Mr. Mason's objection. Mr. Statham then read a rule to the effect that in any case by their conduct the defendants had rendered themselves liable to exclusion. He also read the resolution come to by the quarterly meeting embodied in the notice of suspension sent to the defendants. Compliance was asked with rules 9, 11, and 14, of the old rules, or title to all benefits, etc., would cease. The defendants did not comply, and the matter being reported to the executive council, the suspension took place. Mr. Statham mentioned that it was always the rule to settle disputes by arbitration and similar means, without going to law, in connection with friendly societies, whenever possible; but he also pointed out that the new Act only applied to members in their connection with a society, and did not deal with matters as between a district and a court. The question as to whether the matter should have been settled by arbitration or brought on in the present course was argued at length. Mr. Statham stated that they did go to arbitration and the result was in their favour, the arbitration committee deciding that the defendant court should pay the amount of the present claim to the plaintiffs; with this the defendants had not complied. Mr. Mason said the plaintiffs were not bringing an action to enforce the decision of the committee. The award was not mentioned, and this was an ordinary action. Mr. Statham said there was no clause in the rules showing what course should be taken if the award of an arbitration committee was not complied with. Mr. Mason said the reason the defendants did not appear at the arbitration was because they were entirely suspended from all benefits, etc., and not recognised as a court in any way. If they had gone they would have had no standing nor right to be heard, under the order of suspension. Mr. Statham said the rules did not give a right of action, and they were

claiming under common law to recover a certain amount for a consideration. If the rules had provided for it the matter would have been different. Mr. Mason contended that all disputes, charges, complaints, or claims should be settled by an arbitration committee under the rules of the Order, and that therefore his friend's remarks did not apply. Mr. Statham said the rules did not contain any provision for cases where the award of the arbitration committee mentioned was not complied with. They had three authorities in their favour, the district arbitration committee, the district officers, and the quarterly meeting. Mr. Mason said the plaintiffs had taken their own remedy by suspending the court from all benefits. His Honour said the plaintiffs might have come to his court to enforce the award, but they had not done so. Mr. Statham held that they had power under common law to sue for the amount due to them, and that they could only be excluded by any special clause or agreement in the rules to the contrary, which there was not. The rules did not confine any party to any particular mode of recovering an amount; the suspension was concurrent with other action. The matter in dispute was the liability of a district court to a district, which was set out in the new rules. After further argument upon the question of jurisdiction, his Honour said he had decided not to try the case unless ordered to do so by a higher court. He should strike it out upon that decision, and leave it to the plaintiffs to obtain a rule from the higher court to decide whether he had jurisdiction or not. The costs would be against the plaintiffs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 68.

CASE 175.

LEEDS COUNTY COURT. 1887. *Dec.* 8. *Before* JUDGE GREENHOW.

HUTTON AND OTHERS *v.* MOORE AND OTHERS.

Friendly Society—Claim by District for levies from Lodge—Rules—Time for appeal not expired—Action as to bulk of claim premature.

This was an action in which Hutton and others, the Trustees of the Leeds District Independent Order of Oddfellows, Manchester Unity, claimed the sum of £15 8s. from Moore and others, the Trustees of the Amicitia Lodge at Methley, affiliated to the society, the claim being for levies made by the district upon the lodge. Mr. Child appeared for the plaintiffs, and Mr. Lodge for the defendants. Of the amount claimed £8 17s. 4d. was made up from funeral returns of the lodge to the district, and the bulk of the remainder was incurred in examining the accounts of the defendant lodge, owing to the negligent and unintelligible manner in which the books had been kept. The district had by various resolutions decided that the defendant lodge must pay these levies, and the lodge having made no appeal within the time provided by the rules, it only remained, Mr. Child contended, under the rules, for the court to make an order directing the lodge to make payment.—Mr. Norbury, Corresponding Secretary for the district, in cross-examination, said that on the 5th April he was authorised to write and inform the lodge that it was suspended. It was after the resolution of suspension that the

plaintiffs claimed the sum sued for except as to the £4 for auditing the books. It was for non-payment of that that the lodge was suspended. Since the suspension the lodge had received no benefits.—A question of account was raised by Mr. Lodge, but on that point his Honour was against him. Mr. Lodge further contended that as to £10 2s. 8d. the three months allowed for appeal did not expire until October 4th, whereas the plaint in the present action was entered on the 27th September; therefore the plaintiffs had brought their action too early. —His Honour, taking the same view, gave a verdict for the plaintiffs for £5 5s. 4d. and costs only, less £1 1s. paid into court.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 68.

CASE 176.

HUDDERSFIELD COUNTY COURT. 1888. *March* 23. *Before* JUDGE SNAGGE.

HUDDERSFIELD DISTRICT OF THE NATIONAL INDEPENDENT ORDER OF ODDFELLOWS *v.* TAYLOR & OTHERS.

Friendly Society—Claim by District for Levies from Lodge—Rules—Illegal Secession—Claim allowed

This was a case in which the Huddersfield District of the National Independent Order of Oddfellows sued Joseph Crowe Taylor and others, Trustees of the Lily of the Valley Lodge of the Order, for £13 3s. 5d., being the amount of levies for funeral and management funds payable by the defendants to the plaintiffs for the quarters ending respectively the 30th July and 1st of October, 1887, and the 7th January, 1888.—Mr. S. Learoyd appeared for the plaintiffs, and Mr. Wilkinson, barrister (instructed by Mr. J. W. Piercy), for the defendants.—Friend Hallas, the secretary to the district, produced the quarterly return of members of the lodge he received, which was in April, 1887, and said that upon that return, showing thirty-three financial members, ten unfinancial, and one new member, who became financial in the next quarter, he sent in the claims for each of the three quarters for thirty-four members at 2s. each, together with fines for not making the returns, not sending delegates, and non-payment of levies. At the July quarterly meeting Wm. Armitage attended as a delegate of the lodge, made no objection to the accounts, but when asked for that quarter's levy he produced a return showing nineteen financial members, and offered to pay upon that, but that return was too late, as the accounts were made up. No other returns and no delegates had been sent to the district quarterly meetings since, and no steps had been taken for the lodge to secede. Tom Wood, plumber, Paddock, a member of the defendants' lodge, said that by request of the members he attended a meeting of the lodge in July, and a resolution was proposed that the lodge should leave the district and form a separate district. All present voted for it with the exception of witness and another young man, who did not vote. A resolution was also passed to see the absent members to get them to agree to the withdrawal of the lodge from the district. In August he

went to the Junction Inn, Crosland Moor, where the lodge meeting had been held, and then for the first time learnt that the lodge had been broken up, and the place of meeting had been changed to the Griffin Inn, Crosland Moor. At the July meeting the chairman (William Armitage) and the secretary (Thos. Newsome) and other members said they could see where the Standard of Freedom Lodge had missed it, and that they could see where they could hit it, and get out all right. They said the way they should do was to cease paying their contributions, run back, and then form another lodge. The defence was that if the members of a lodge ceased to pay their contributions for four lodge nights they ceased to be entitled to benefit until they brought themselves into benefit by paying their arrears, and the lodge and the district had no liability towards them. In this case all the members ceased to pay contributions, and paid nothing for May, June, and July, nor since. Therefore as the lodge could make no claim on the district in respect of those members, the district could make no levy on the lodge in respect of such members. In any case the lodge could only be liable for the nineteen members shown on the July return, which was the last return sent in. The defendants had paid a sum of money into court to cover the claim on nineteen members and the fines. It was admitted that the lodge had not seceded from the district under the forms of the rules. Thomas Newsome, landlord of the Clarence Hotel, Newsome, and a warehouseman, said he had been the only secretary of the lodge since it started in January, 1885. The last contributions by any members were paid on April 9th, 1887. He attended in May, June, and July to receive contributions, but none were paid. No minutes were left of the July meeting. He did not go to the August meeting. It was not his place to keep the minutes; it was the duty of the Grand Master. He made no further return after that one of nineteen members; there was no return to make, and the lodge was making no claims on the district. It was in April when it was agreed that the members of the lodge should cease to pay contributions. He went to the place of meeting on the lodge night in July, but there was no one present. In cross-examination he said the idea of ceasing paying to avoid going through the forms of secession was not his invention; the members mentioned that there was a better way, and they all agreed to run unfinancial. William Armitage, tobacconist, said he joined the lodge, but was not a member now, because he became unfinancial. Cross-examined: He did not know whether he was chairman in July; he would be if he was Grand Master, but he did not know whether he was then Grand Master. The rules told the members of this scheme for leaving the district; he had seen it himself for a long time: it was nothing new. His Honour said he could not see any justification whatever for the course that had been adopted by the lodge. The last valid return which was in time was that one of April, and upon that the levies were made, and they must be paid. The amount paid into court was not sufficient. There was nothing to show that the whole of the members had become unfinancial since. Mr. Wilkinson asked for leave to appeal upon the construction of the rules. His Honour refused leave to appeal, and said that there was a right and a wrong way of seceding from the district, and the lodge must take the right way.

HIGH COURT OF JUSTICE.
QUEEN'S BENCH DIVISION.
1887.
Dec. 7.
DIVISIONAL COURT.
Before
WILLS, J.,
GRANTHAM, J.

CASE 177.

WILKINSON *v.* JAGGER.

County Court—Practice—Appeal—Application to County Court—Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap* 60), *sec.* 22, *sub-sec. (d)—Claim for Levies—Secession—Rules—Registration—Refusal of County Court Judge to decide question as to whether Branch had properly seceded—Case remitted back to County Court.*

In the Queen's Bench Division of the High Court of Justice, on Wednesday, December 7th, 1887, before Mr. Justice Wills and Mr. Justice Grantham, sitting as a Divisional Court, the case of Wilkinson and others *v.* Jagger and others came on for consideration. Mr. E. Tindal Atkinson, Q.C., and Mr. B. G. Wilkinson (instructed by Mr. J. W. Piercy, solicitor, of Huddersfield) were counsel for the appellants, the defendants in the court below; Mr. Waddy, Q.C., M.P. and Mr. J. L. Walton (instructed by Messrs. Learoyd and Simpson, solicitors, of Huddersfield) represented the respondents, the plaintiffs in the County Court.

Mr. E. Tindal Atkinson said this was the appeal of the defendants from a judgment of the learned County Court Judge at Huddersfield. The action was brought by the plaintiffs, who were the trustees of the district lodge of the National Independent Order of Oddfellows, against the defendants, who were the trustees of a branch lodge of that Order, to enforce a claim in the shape of a levy provided by the rules of the society, and made by the trustees of the district lodge upon the trustees of the branch lodge. The case came into the County Court under section 22 of the Friendly Societies Act of 1875. The branch with which the appellant defendants were connected was a very flourishing one. It had the greatest number of members in the district, and they were desirous of severing their connection with the Order. Accordingly they proceeded to take the necessary steps provided by the rules for the purpose of severing such connection. They called a special meeting, they had a majority of three-fourths of the members in favour of secession, they directed that the liabilities be ascertained, and that a sum of money be set apart for the purpose of satisfying them. The papers necessary to secede were sent into the district lodge, and after some delay that body indicated that they disputed the validity of the steps which had been taken for the purpose of seceding. Ultimately the district lodge made a levy on the branch lodge under the rules, and this having come before the County Court Judge, he, finding that the branch was still registered, held that so long as they were registered as a branch of the friendly society they were estopped from denying their liability to pay the levy. The question as to whether the branch had ever legally separated its connection with the district lodge had not been decided, the Registrar of Friendly Societies, to whom the County Court Judge had referred the matter, saying that that was not a point on which he was called to express an opinion.

Mr. Waddy for the plaintiffs, the present respondents, argued that the verdict was right, as the branch remained registered as a part of the district body.

Mr. Justice Wills, without saying that his mind was finally made up, said it seemed to him that as soon as the branch lodge got a three-fourths majority in favour of secession, that was accomplished, although registration might be necessary to continue for other purposes prior to a final separation.

Mr. Waddy said all depended on registration, which was the whole life of the societies.

The case was not concluded when the court rose.

THURSDAY.

Mr. Waddy resuming his argument, contended that this was not an appeal from the County Court in the ordinary course, and that the proper way for the appellants to have moved would have been by a special case. The statute provided that the case should be tried in a certain fashion, and as the inquiry was a different one, it was not competent now to raise the question, which ought to have been tried in a particular way.

Mr. Justice Wills: If that applies, then your action was ill-founded in the beginning.

Mr. Waddy thought not. He was entitled to bring his plaint in the County Court. It was simply a question of money due.

Mr. Justice Wills: It is a dispute, is it not?

Mr. Waddy: No doubt it is; but I say they must get the County Court Judge to state a case, and cannot come by way of appeal.

Mr. Justice Wills: Then we had better send the case back to the County Court.

Mr. Waddy assented. The better course would be for the County Court Judge to judicially state a case, in such conditions and terms as their lordships might think fit to impose on either side. The case should then come before the High Court for its opinion.

Mr. Tindal Atkinson doubted if the difficulty arose which Mr. Waddy had submitted. This was a dispute between the parties. If, however, the court thought the appeal was misconceived, he would be glad to meet his friend so as to get a final determination of the matter.

Mr. Justice Grantham: Suppose we decide in your favour on this appeal, what is your position then? Will that finally settle whether the branch lodge has seceded?

Mr. Tindal Atkinson: If you were in my favour you must send the case down to the County Court Judge to be tried on the merits.

Mr. Justice Grantham: Then that raises the whole question of secession. Therefore it comes to the same thing if we send the case back to have a special case stated.

Mr. Waddy said that was really what the whole thing would amount to.

Mr. Tindal Atkinson insisted that this was not an arbitration in the County Court under the Friendly Societies Act. Had it been so there would have been no appeal. But, being a regular plaint, there was the usual appeal to the superior court. To show that this was the practice, he mentioned, that in an action brought against the Royal Liver Friendly Society there had been an application for a certiorari to remove the case from the County Court at Liverpool into the High Court, and that was granted.

After very lengthy arguments on the point.

The court held that the case had been entered in the County Courts in the regular way, and that, therefore, the appeal from the County Court Judge in the way it had been brought forward was regular.

Mr. Waddy said a very important question now arose: Whether or not it was competent for any lodge to say, "We have seceded?" The contention made in the Huddersfield County Court was that the plaintiffs could not recover the money from the Huddersfield branch because they had seceded. The ruling of the learned County Court Judge was that he found the local branch still registered as a lodge of that particular district, and therefore he decided in favour of the plaintiffs. In doing this he (Mr. Waddy) maintained that he was right; and in support of that contention he quoted from a judgment in the Court of Appeal, in the case of Schofield *v.* Vause, which had reference to the Royal Caledonian Lodge of Oddfellows at Bolton. That judgment decided that this society could not secede until certain things were done, similar to what he said had not been done in the case of the Huddersfield lodge.

Mr. Justice Grantham: You may say they have not done it, but the County Court Judge does not say so. He simply says they are still registered, and therefore he gives judgment against them.

Mr. Justice Wills said he still thought that when the three-fourths majority in favour of secession had been obtained, the lodge was freed, the question of registration or non-registration being a mere formality, Therefore if the case was sent back to the County Court, it would be for the learned County Court Judge to ascertain whether all the substantial parts of the rule relating to secession had been complied with.

Mr. Waddy: Then what we have to do is to go back to the County Court Judge and get the facts found?

Mr. Justice Wills: Yes. It seems to me that he was wrong in refusing to entertain the question as to whether the society had properly seceded. He seems to me to have put the cart before the horse by what he decided.

Mr. Justice Grantham concurred. He did not regret the lengthy discussion which had taken place on the case, because it was an important one, and he hoped the arguments would do some good in the elucidation of future difficulties. Still the court was of the same opinion then as it was at four o'clock on Wednesday afternoon. The

case in the Court of Appeal which Mr. Waddy had quoted he (the learned judge) thought was conclusive against him.

Mr. Waddy: I should have hoped to have induced your lordship to take a very different view before I had done.

The judgment of the County Court Judge was then set aside, and the case remitted for him to decide it on its merits.

Mr. Tindal Atkinson asked for the costs of the appeal, and also for the costs in the County Court, which were thrown away, as the judge would not hear the case on its merits.

Mr. Justice Wills said the costs of the appeal would be awarded to the appellants, but the court did not in any way deal with the costs in the County Court.

CASE 178.

HIGH COURT OF JUSTICE, QUEEN'S BENCH DIVISION. WILLS, J. 1896. *June* 28, 29.

MORRIS *v.* WHITE.

Friendly Society—Report—Alleged libel—Malicious prosecution—Damages awarded.

In the Queen's Bench Division of the High Court of Justice, on Monday, the hearing commenced of a case of alleged malicious prosecution. The case, which was heard before Mr. Justice Wills, was one in which Mr. James Morris, managing clerk to Mr. Roberts, solicitor, Luton, was the plaintiff, and Mr. Francis Frederick White, builder, of Princes Street, Dunstable, was the defendant. Mr. Bigham, Q.C., with Mr. Lewis Thomas (instructed by Mr. S. Ward, of Dudley, appeared for the plaintiff) and Dr. Blake Odgers, Q.C., with Mr. Saltren Willett (instructed by Mr. Lathom), represented the defendant.

Mr. Bigham, in opening the case, said the action was one for malicious prosecution taken by the plaintiff against Mr. Francis Frederick White. The plaintiff was a solicitor's managing clerk in Luton, and had occupied that position for about 20 years. He was also connected with a very important friendly society, viz., the Ancient Order of Foresters. He (Mr. Bigham) was astonished to find that in that society there were over one million members and that the capital amounted to £5,500,000 sterling. The plaintiff was secretary for one branch of that society called Court Hope, at Luton, and for 11 years he had occupied that position. That fact showed that the chief men in this most important society had great confidence in the plaintiff. In 1895 a discussion arose as to the state of the accounts of another branch of this society called Court Unity, at Dunstable, and it was thought desirable for the affairs of the court to be investigated. Thereupon the executive council of the Foresters, he supposed having confidence in Mr. Morris, passed a resolution that the secretary of Court Hope (Mr. Morris) should go to Dunstable and investigate the position of affairs of Court Unity. Accordingly the plaintiff made the required investigation, and having done so he wrote a report which Mr. White, who at one time was

secretary of the Dunstable branch, appeared to have resented, and said he would make Mr. Morris sit up. Mr. White appeared to have thought that the report drawn up by the plaintiff cast some reflection upon him, and the jury had to say whether it did or did not. However, it annoyed him so much that he took proceedings against the plaintiff in the police court and the plaintiff had to appear to answer the charge of what was called criminal libel. The only evidence given before the magistrates was a printed document—the report which Mr. Morris had presented to the local branch of the Foresters on the state of the affairs of the society—and the magistrates were asked to commit Mr. Morris for trial; but they, like sensible men, did not do so, and dismissed the case. Mr. Morris had simply done his duty fairly and properly, without any ill-feeling whatever, and then the defendant went and dragged him into a criminal court on a criminal charge. He could not help thinking that the prosecution was instituted out of spite and as an attack upon his client. When the magistrates dismissed the case the defendant absolutely declined to make an apology or give any compensation whatever, and so the plaintiff was compelled to take action in those courts. Mr. Bigham then read Mr. Morris's report, a lengthy document, from which the following are extracts, these being pointed out to the jury by learned counsel:—"The monthly contributions credited to the several members by the late secretary in these books, and the divisions of the amounts to the respective funds, are mostly made and entered by his son (F. W. White) in a clear manner; but, on the other hand, I find the books have not been properly kept by the late secretary. They show great neglect and irregularities in carrying out the duties which devolved upon him, viz.:—The receipts for each month during the five years are not correctly accounted for. Only in the instance of 13 months do the receipts entered agree with the amounts paid into the banking account of the court—the London and County Bank (Dunstable branch)—while in 28 instances cash deficiencies of small amounts are shown; and in 19 instances cash surpluses of small amounts are shown in the monthly payments into the bank, over and above the receipts entered in the book. For the purpose of making his balance-sheet at the end of the year agree with the cash balance at the bank, the late secretary sets off the total cash surplus against the total cash deficiency, and if any deficiency is then shown he deducts the amount for the total management contribution accounted for in his books. The assistant secretary's book is not kept in a manner to enable me to trace these errors." Another paragraph pointed out was: "I also further find that a serious violation of section 1 of general law 80a has been permitted by the late secretary in taking contributions from members after their arrears of contributions exceeded 12 months, and in some instances these members have received sick benefit." Then followed a tabulated account of the arrears of certain members. Another item in the report was a question about £300:—"The present position of this investment is somewhat complicated. It seems that in 1892, the court trustees, with one of the other courts in the district, amalgamated with the districts in making up £600, which the latter advanced to the trustees of the Dunstable Friendly Societies Medical Association, which was formed, I believe, in 1891, on mortgage at 4 per cent. on the freehold property known as 'Lanark House,' High Street, Dunstable, which the Medical Association had purchased. The association did not turn out a success, and the court trustees not getting any interest paid them on the £300, the trustees of the Medical Association, on December 12, 1893, conveyed the fee simple in the property to the trustees of the

Dunstable District. This conveyance, with the title deeds, are now deposited with the court trustees as collateral security for the investment of their £300. They do not hold a properly executed mortgage for the amount. The reason given me why no interest has been paid to the court on this investment is that money was used and spent by the district trustees towards the cost of furnishing the premises of the Medical Association." Counsel then spoke on the report generally at some length, and proceeded to say that whether the report was accurate or not he submitted was a matter of absolute indifference so long as it was made by his client honestly and in the strict discharge of his duties. It was a gross injustice that because a man honestly and straightforwardly discharged his task he was to be hauled up before the magistrates and tried as a criminal, and that the magistrates should be asked to send him to prison to await his trial at the assizes. It was a gross injustice, and Mr. White ought to have recognised, and must have recognised that at the time he instituted the proceedings. The information upon which the summons was issued was read. It charged the plaintiff in this action with publishing a certain defamatory libel of and concerning Francis Frederick White, builder, of Princes-street, Dunstable, late secretary of Court Unity, No. 4,799, Dunstable, on October 24, 1895, and various other dates between September 4 and October 31, 1895; but these last words were struck out when his client was before the magistrates.

The judge: I suppose the other dates are some occasion upon which the publication is not supposed to be privileged.

Mr. Bigham: Yes; the report was read to a meeting of the Court Unity on October 24. The deposition of the witness Joseph Boskett taken by the magistrates' clerk at the trial at Dunstable, was read, which stated that "he was the secretary of the Dunstable Court Unity, 4,799. He produced the minute-book showing his appointment (circular and minute-book put in). He also produced the minute-book containing minutes of a meeting held on October 24th, 1895, at which he was present as secretary. A proposition was made by Bro. Randall, seconded by Bro. F. Walker, 'That Bro. James Morris, of the Luton District, be requested to attend and explain his report.' Mr. Morris did attend and read his report, which was adopted and filed. Mr. Morris was not a member of Court Unity, but belonged to the Luton Foresters' Court. No one but Foresters were present. Members of other courts were admitted, and some were present. The report read concerned only Court Unity. Mr. Franklin said the report was wrong with reference to the interest on the £300. Mr. Morris remarked that there was no interest shown on the £300 alone." After a few further remarks,

Mr. S. D. B. Middleton, magistrates' clerk at Dunstable, was put in the box. In answer to Dr. Blake Odgers he said the first and original information included dates between September 4 and November. At the hearing before the magistrates, Mr. White was represented by Mr. Lathom, who was required to elect which of the dates specified in the summons he would proceed on. It was very possible that Mr. Lathom had evidence upon the other dates; but the magistrates struck out the words "And other dates," and confined the prosecution to the privileged occasion—October 24, 1895.—By Mr. Bigham: Mr. Lathom was solicitor for Mr. White. He was requested to elect upon which date he would

proceed, and he selected the date of October 24, and then called Mr. Boskett, who gave evidence. That was the only evidence of publication given before the magistrates.

The plaintiff (Mr. James Morris) said he was managing clerk to Mr. J. G. Roberts, solicitor, Luton and London. He had, altogether, been in the office 32 years. He was also secretary to Court Hope in the Luton District of the Ancient Order of Foresters, and had been secretary for 11 years. Prior to that time he was assistant secretary. Altogether he had been in office 25 years. He was also secretary to the Luton Permanent Benefit Building Society. On May 25 of last year he received a request from the Permanent Secretary of the society and an order from the executive council of the Foresters to undertake the examination of the books of Court Unity, which he did. Mr. White had for some years been secretary to Court Unity. Witness examined the books for the past five years. After he had made his report he was requested to attend a meeting of Court Unity and read the report. That was a special meeting held on October 24, and nobody was present but members of the Order, who had a perfect right to be present, whether they belonged to Court Unity or to any other court of the Order in the country. A resolution was passed, and a minute entered in the book that he should read the report. When his report was complete he sent it to the executive council, and subsequently it was forwarded to Brother Franklin, the then district secretary. After the report had been submitted a discussion on it took place, and subsequently it was adopted and ordered to be filed. He had no ill-feeling whatever towards Mr. White. On November 21 he was summoned for libel, and on November 27 he appeared at the Dunstable Court ; but the case was adjourned till December 11, on which date it was proceeded with, the hearing lasting from 11 o'clock till after 7-30 at night, and then the charge was dismissed. Mr. Lathom was Mr. White's solicitor, and he heard him open the case. In his speech he said there was no ill-feeling or malice on the part of the plaintiff in that case. Witness had been put to considerable expense in the case. His incidental expenses for witnesses and the preparation of the defence cost him £10, and his solicitor's costs were £32 2s. 10d. He had paid that bill. He was well-known throughout the county of Bedford, and the effect of the prosecution had been to injure his reputation. There were a good many people, clients of his, who were under the impression that there was something wrong, and they had left him. He had been spoken to respecting the affair. Whilst preparing his defence he had had to employ a chartered accountant to help him in the work of the accounts of the Building Society, which had about that time to be made up.

Dr. Blake Odgers : How far is Luton from Dunstable ?—Five miles.

When did the case first come on ?—On November 27.

Was the case heard that day ?—No ; it was adjourned for a fortnight. The hearing took about 20 minutes.

And you say that the chartered accountant put you to a great deal of expense ?—Yes, because I had to be away preparing my defence.

How long has Mr. White been secretary of this branch of the Foresters' Society ?—I should think perhaps about 20 years.

And under his secretaryship has the society flourished?—Yes, it certainly has grown in numbers.

Has Mr. White not increased the annual income from about £100 to something like £2,000 per annum?—No, not £2,000 a year; that is the gross capital.

You made a thorough and complete audit and examination of the accounts kept by the late secretary for the past five years?—Yes.

Did you ever apply to Mr. White for any explanation?—Yes, I applied to Mr. White for the vouchers, medical certificates and other papers and documents that would assist me in my work. After he had made that application, the witness proceeded, he did not give the defendant any further opportunity of explaining anything.

In further cross-examination witness said that the sick fund had been managed in a very indifferent manner, and there were a large number of members 12 months in arrear who ought to have been suspended. If a member was suspended his sick pay was forfeited for four months, and the rules of the society should be enforced. They were at Luton, but in the case of Court Unity they had not been. When he applied for the vouchers and medical certificates Mr. White told him that it was the custom to destroy them. He was summoned to attend the meeting to read his report and he was accompanied by three officers of the Luton District, these being Brother Tofield (the District Chief Ranger), Brother Carter and another person, they all being members of Court Hope. When he read the report Brother Franklin said there were some inaccuracies, but no one said it was a libel on the late secretary. The rule of the society was for the accounts to be audited in April and October and not in June or December. The accounts were not properly balanced. On the investment of the £300 he was informed that no interest had been received. The Medical Association premises were not furnished 18 months before the £300 was given. The officers of the court he considered to be the proper persons to have up and examine and see if he could get any information from them. He remembered going to the Swan Inn at Markyate on October 12. He there met Mr. James Franklin, who introduced himself to him as the brother of Mr. Edward Franklin. He did not say a word to Mr. J. Franklin about the affairs at Court Unity, or mention the name of Mr. White. He did not pull out a packet and say "Here it is in 14 pages," for on that day he had sent the report to the executive council. He had taken a copy of the report, and that was locked up at the office. Nobody had at any time previous to the report being read seen it or been told about it. Mr. Ward, of Dudley, was the solicitor who represented him, and it was at the suggestion of the executive council that Mr. Ward was engaged, he being a solicitor well versed in the law appertaining to friendly societies.—By Mr. Bigham: The executive council suggested it to him to engage Mr. Ward; he was the solicitor for the Foresters' society. He (Mr. Morris) retained Mr. Ward for the defence. He prepared the report for the executive council, to whom he sent it, and received an acknowledgment of it from the Permanent Secretary (Mr. Ballan Stead).

The judge observed that if the members were not suspended they knew that the rule was not carried out, and then it became a dead letter, and everybody connected with the society was aware that the rule was not observed.

In further examination by Mr. Bigham, witness said that the vouchers, cheques, and medical certificates should be kept for five years, because at the end of every five years a valuation was made. He had found that cheques had been drawn in excess of the proper amount, and the excess was subtracted off the next cheque.—By Dr. Blake Odgers: The amounts always appeared on the back of the counterfoil of the cheque.

The judge said his experience of such cases was that the trouble always began with some irregularities by which the rules were ignored. He hoped nobody would try to make out that the thing was properly done when any irregularities existed.

Mr. James Gentle, plait merchant, of Luton, said he saw the account of the case at the Dunstable Police Court, when the adjournment was asked for, in the papers, and about December 5 he met Mr. White on Harpenden Station. Whilst in conversation Mr. White said that he was the plaintiff in the case, and that he should make Mr. Morris sit up.

Mr. Ernest M. Williams, a member of the staff of the *Luton Reporter*, said he attended the Dunstable Petty Sessions on December 11, and reported the case of the charge of criminal libel brought against the plaintiff (Mr. Morris) by the defendant (Mr. White). He sat next to the defendant at the solicitors' table. After the hearing, and whilst the magistrates were away considering their decision, the defendant, himself, and others sitting near, were conversing on the case, when some person remarked "I wonder what the decision of the magistrates will be." On being appealed to by Mr. White he expressed the opinion that the case would be dismissed, and this appeared to be the general opinion. The defendant (White) then said, "If I lose this case I shall not let the matter rest here, but shall take further proceedings against Morris."

Dr. Blake Odgers addressed his lordship on behalf of the defence. In stating the facts of the case he said Mr. White had for 28 years been secretary of Court Unity at Dunstable, and by his industry the revenue of the court had been increased from about £100 a year to about £2,000 per annum. The report, he maintained, was misleading and inaccurate and went out of its way to attack his client. He should call a witness to prove that on a certain date Mr. Morris was at the Swan Inn, Markyate, and that something was said about some document which contained 14 pages. He then commented upon the trial before the magistrates at Dunstable, and said the defendant had no ill-feeling against the plaintiff, and as for malice there was none whatever.

The defendant (Mr. Francis Frederick White), on going into the box, said he was a builder, residing in Princes Street, Dunstable. He had been secretary of Court Unity since 1867 till about February, 1895, and during that time he had raised the valuation of the court from about £50 to £2,000. During his term of office resolutions had been passed at which his conduct was condemned; but more often resolutions had been passed in his favour. He did not intend going to the meeting at which the report was read, for he had made up his mind to leave the society altogether. In regard to the sum of £15 which it was alleged had not been charged the management fund, he was certain it had appeared in the accounts of the court. They had never made a collection at his court to make up a deficiency. It was not needed on account of the

management of the court having been such as to obviate all necessity of such a proceeding. As regarded the vouchers and medical certificates, it was untrue that he had destroyed them. The medical certificates were to show when a member was declared on the sick fund and when he was declared off. There was a second record on the back of all counterfoils of the medical certificates. He was never asked for any explanation whatever in regard to anything in connection with his method of procedure in office as secretary. The rule of the court said that the accounts should be audited once in six months, but a general law of the society said they should be audited once a year, and latterly that had been the case. The audit prior to his leaving was made about the end of December, 1894, or at the beginning of January of 1895, and he resigned in February, 1895. The medical Institute was furnished 18 months before the date when the sum of £600 was subscribed towards it. He had sought municipal honours; but had been obliged to withdraw his name on account of the rumours and talk in the town about him and the report. He had been stopped by many persons and questioned as to whether the rumours were true concerning him. Amongst them were Mr. Hill, of the Sugar Loaf Hotel, Mr. Gutteridge, Mr. Jos. Cook, Mr. Ford, coal merchant, Mr. Alfred Smith, Mr. Horton (of Tottenhoe), and many others. He consulted his solicitor and left the matter entirely in his hands, and the result was that criminal proceedings were taken. He had no recollection of having opened his mouth or made such statements to Mr. Gentle or to Mr. Williams as had been given in evidence.

Mr. Bigham: I daresay you know that a police-court is a place where persons are not desirous of appearing, Mr. White?—Yes.

Then will you kindly tell me why you put my client into the position of an ordinary thief? What did you do that for?—I put the matter in Mr. Lathom's hands and he advised me to take such proceedings. Further, I preferred for the case to appear in the neighbourhood where I lived in order that my character might be cleared.

Why did you put my client into the police-court?—My solicitor instituted the proceedings.

Will you please answer my question? Why did you put my client into the police-court?—I cannot answer that.

Do you mean to tell me that you cannot say why Mr. Morris was put into the police-court—a solicitor's clerk, a person whom such proceedings might injure very seriously indeed?—I had my own character at stake. I had that to vindicate. I had no ill-feeling whatever in the matter. He had, he afterwards said, been a candidate for municipal honours, but had withdrawn his name on account of certain rumours being afloat.

In further cross-examination witness said he had been the secretary of Court Unity for a long time, and under his care the branch had grown a good deal. He had considerable influence with the members, and they took his advice in all matters. He resigned in February, 1895. Why he resigned was that he thought some one else should have control, and he declined to stand. He did not send in his resignation. He was nominated again but he refused to stand. He did not refuse to stand because he was aware that he should not be re-elected, but because he

desired to give up the position. Mr. James Boskett was one of the gentlemen nominated for the secretaryship, and eventually he was made secretary. That was before the plaintiff had anything whatever to do with Court Unity. He ceased to be secretary before the order for the audit was given by the executive council. He could not say why Mr. Morris was asked to audit the accounts. There had not been any minute entered in the book. He could not say how much in arrears he was himself, as he did not trouble very much about himself. He might have been in arrear for perhaps two months or so, and if the rules of the court were strictly applied it was very likely that he was suspended at the time of his resignation; but he had never kept a card for himself. He had time after time been in arrears with his payments. He was not aware that the plaintiff had any ill-feeling or spite against him whatever. It was his (Mr. Morris's) duty when ordered to make as honest and straightforward a report as possible; but he suggested that the report was not true in regard to the statement of the interest. He did not suggest that the plaintiff had wilfully made a false report against him. The statement in the report respecting the £300 was all right, except the expression that no interest was paid on the £300, for if Mr. Morris had chosen to look in the books he would have seen that some interest had been paid. The sum of £300 was advanced in various amounts, and the interest was advanced on the several sums. He believed the report read at the meeting on October 24 was incorrect. He did not see it; he heard it from Mr. Franklin, who said that the statement as to no interest, etc., was not named in the report that was read to the meeting on October 24, and that the passage had since been put in. At the end of 1894 interest was payable on the £300. He was not invited to the meeting at which the report was read, because he was in arrear with his payments, and did not wish to pay up because he had determined to quit the society. He did not send Mr. Franklin to the meeting. Mr. Franklin was a member, and had a right to go to the meeting. By Dr. Blake Odgers: He did not send Mr. Franklin to the meeting. He had decided to leave the society, but had not sent in a formal notice of withdrawal. When the report was read to the meeting he was more than four months in arrears. He was suspended, and could, therefore, not go to the meeting. He was compelled to take proceedings to clear his character. He did not say what the proceedings were to be, but left it with his legal adviser.

Mr. Edward Franklin was the next witness. He had, he said, been one of the trustees of the district. There were five courts in the Dunstable District, and Court Unity was one of them. He was present when Mr. Morris read the report to the specially convened meeting. At that time he was district secretary, and had received the report from the executive council with a letter giving him instructions. It was a meeting specially summoned for the purpose, and there was a very full attendance of members of the court, and a few visitors from other courts in the district. Mr. Morris read the report, but stopped at one or two places in it, and said there might be other matters that might be found out. When he had finished reading the report, he said it was the duty of the court to adopt the report at once. Witness asked if it was not permissible for questions to be asked before they adopted so important a document. He obtained permission to put questions, and he then pointed out that one part of the report was inaccurate, and that was the statement that no interest had been paid on the investment of the £300. He asked Mr. Morris to look at a certain page in one of the

books, and said he believed he would find a statement. He (Mr. Morris) picked up the book, pushed it across the table, and said, "Look for yourself." He said he should not, and that it was the place of plaintiff to do so. After a time Mr. Morris opened the book at a certain page and found the item, "Interest from district £2 6s. 8d." That was the interest on the £50. Interest had been paid up to the end of 1893. He objected to the report, and in consequence it was amended, the above statement being added in the margin in red ink.

By Mr. Bingham: He did not consider that the report of Mr. Morris cast any reflection upon him, although he had been a trustee and an auditor. He took exception to the statement that the money did not tally with the vouchers. It was true that at the time the report was made over 100 members were suspended for being in arrear. He complained that Mr. Morris picked out Mr. White and his two sons from amongst about 144 suspended members to show them up.

The judge: Is it usual to have members eight, nine and ten months in arrear with their payments?

Witness: Yes, my lord.

The judge: There are 144 cases of arrears, and the secretary of a society like this ought to set a good example and not be in arrear himself.

By Mr. Bigham: He (witness) thought that Mr. Morris could have done his duty without picking out the cases of the three Whites. He was not fined at all that night at that meeting. The C.R. said he would fine him several times; but when he found he could not inflict the fines he wisely withdrew them. (Laughter.)

Mr. Bigham: Oh, how was that?

Witness: Because he did not know his business. (Loud laughter.) He was endeavouring to apply the rules of debate to question and answer.

Mr. James Franklin said he kept the Borough Arms, Dunstable. On Saturday evening, October 12, he was at the Swan Inn, Markyate, and there met Mr. Morris. A conversation took place, and after referring to his brother, Mr. Morris said he was going into the accounts of Court Unity. He said to plaintiff that there was a rumour about Dunstable that Mr. White had robbed the club, and Mr. Morris replied, "Oh, there is no truth in that; things are all right." He then took a packet out of his pocket and turning over the leaves said, "I have it all down here in these 14 pages."

By Mr. Bigham: Plaintiff did not speak against his brother or Mr. White.

By Dr. Blake Odgers: It was rumoured in Dunstable that Mr. White had robbed the club.

Lieutenant-Colonel Hambling said he was one of the justices on the Bench when the case of White *v.* Morris was heard, and after a long hearing the magistrates decided to dismiss the case.

Dr. Blake Odgers rose and said he had completed the case, and should make a few remarks on the question of reasonable and probable cause, which he submitted was absent, and which must be proved by the plaintiff. They had submitted that the plaintiff wrote, read, and published the document which had been read to them in court. That document was libellous, and was published by the plaintiff. That was a *prima facie* cause and formed *prima facie* ground for the criminal proceedings. Mr. White felt he must do something to vindicate his character, and having instructed his solicitor in the matter left it to him to select in which way his character should be cleared. His solicitor selected the criminal process, for then there was an opportunity to have the case gone into at Dunstable, the very place in which both the parties were known, and that course was quicker and cheaper. He held that there was reasonable cause in the publication of such a document. The report was read at a court meeting at which there were persons present who were not members of Court Unity, and who had nothing to do with the business at this particular court. Even the plaintiff admitted that he brought three members of the Luton Court, two of whom were invited and one who was not. These were strangers at a court meeting to hear business in which they could have no interest whatever.

His lordship: The occasion was privileged. Every member of the whole organisation had an interest in the way the business was conducted at this particular court. They had an interest in the welfare and true management of each branch, and the plaintiff had a duty to perform.

Speaking to the jury, Dr. Blake Odgers said the present case was one of malicious prosecution. His client, Mr. White, had for 28 years been secretary of Court Unity, and had worked up this court of Forestry into a large court, and had established other lodges in the district. He had been district secretary as well as secretary to Court Unity, and his work had apparently satisfied everybody. Then, after 28 years service, he resigned his post, having discharged his duties to the satisfaction of all, the only thing that was brought against him being that he did not pay up his 2s. 1d. monthly always to time. Everybody trusted him and nobody found any fault with him. There was no suggestion that plaintiff had suffered damage by the proceedings at Dunstable. He still remained as managing clerk to the same gentleman he had been employed by. The plaintiff was the secretary of the Luton branch of the same Order of Foresters, and went to Dunstable to investigate the affairs of Court Unity and the report of that inquiry they had heard read. It was nothing but an attack on the late secretary. The plaintiff had never gone to the defendant and asked for any explanation of anything. Had he done so, Mr. White would have told plaintiff to look at the backs of the counterfoils of the cheques, and he would have found all things right. In the report his client was charged with not having carried out his duties as secretary properly, and also with great neglect and a serious breach of a certain rule of the Order. Mr. White was charged with malicious prosecution. He asked the jury to look at his client and see if he looked at all malicious. Rumours had been current in Dunstable that defendant had been robbing the club, which was quite wrong, and to vindicate his character he took proceedings, or rather his solicitor did for him. It was a duty to himself and his children that he should do so. He instructed his solicitor, who determined to take proceedings in the

court at Dunstable, and those proceedings, which were criminal, were constructed by the plaintiff into malice and ill-feeling on the part of the defendant White. They said he was actuated by a desire to annoy and injure Mr. Morris, whereas the proceedings were instituted to vindicate Mr. White's character. The day before Mr. Bigham had said that the defendant was a candidate for municipal honours, and that there was a rumour which was prejudicial to him and that he took those proceedings with a view to remove the obstacle in his way.

His lordship : I interposed yesterday when that question was asked, as it was quite irrelevant. It was Mr. Willett who pressed the matter.

Dr. Blake Odgers, continuing, said it was also said that while the Bench of Magistrates were away considering their decision the defendant said something that was malicious. Mr. White was said to have said "If I lose this case I shall take further proceedings against Morris," and that was at once put in as evidence of malice. The magistrates did dismiss the case, and yet the defendant had not taken further proceedings. The very fact that the magistrates did dismiss the case and ordered the parties to pay their own costs to his mind showed that there was some ground for the proceedings being taken. Then his client did not take his case to the higher court, and that was evidence that he was not malicious. It had also been suggested that before the case was heard at Dunstable something of a malicious nature was said by the defendant to another gentleman at Harpenden station. It was said that White had said that "he would make Morris sit up." Now he contended that there was nothing in that whatever. It was a phrase which even the plaintiff himself might have used and nobody would have thought anything of it. In conclusion, he said that his client was not actuated by any ill-feeling or malice whatever. All he wanted to do was to set himself right, and for that purpose, and that purpose alone, he was obliged to take proceedings.

Mr. Thomas (junior counsel for the plaintiff), in addressing the jury on behalf of the plaintiff, said he believed that the jury would say that the report was a very temperate one and was by no means an attack upon Mr. White. The report opened with a statement entirely in favour of the defendant. Mr. White when in the witness-box could not say that one item in the report was inaccurate. He had been questioned step by step, and everything was all right with the exception of the item about the interest on the £300. It was absolutely clear that Mr. Morris only did his duty when he prepared that report and laid it before Court Unity. In such a society as the Foresters everything must be managed with the strictest accuracy and the strictest investigations must be made. Mr. White was apparently urged on by his friend Mr. Franklin, who it would seem was sent to the meeting by the defendant. At that meeting Mr. Franklin would have been fined several times by the Chief Ranger had it been possible under the circumstances. But twice during that meeting was Mr. Franklin called to order and requested to conduct himself in a proper manner. The report was read by Mr. Morris, discussed and adopted in its entirety. The report, he maintained, was not in any way libellous. But the defendant White objected to it and dragged his client before a criminal tribunal, and if the magistrates had not been men of sense there would have been a charge hanging over the head of the plaintiff until the assizes had been held. It was said that those proceedings at Dunstable were taken to clear up an aspersion that had never been made on his character. Counsel then read a portion of

the Libel Act of 1843, which stated that had a case been proved against the plaintiff he must have suffered 12 months imprisonment. That was what Mr. White wanted to do by taking the case before the magistrates. It was to cast the greatest indignity upon him to take such proceedings in Dunstable, where for some 30 years the defendant had lived and the plaintiff was well-known. Every Forester in England was interested in the working of the society and every Forester, no matter where he was, had an absolute right to be present at the meeting at which the report was read. If impartial reports were to be prepared, were they to be the subject of criminal prosecution? No doubt the books were wrongly kept; but that was possibly through the incapacity of Mr. White, and so was it the same with the irregularities. It was not suggested that it was anything more. Let the gentlemen of the jury test it for themselves. Suppose one of them had been in Mr. Morris's place and had had to prepare a report and had been criminally prosecuted what would have been their feelings in the matter? He asked them to find for the plaintiff and to consider what was the damage done to his client and to award what they thought a fitting compensation.

His lordship, in summing up to the jury, was understood to say that in such a case it was necessary to satisfy the judge that there was reasonable and probable cause for a prosecution being instituted, and it was necessary for the jury to be satisfied that the person instituting such a prosecution was actuated by malice. In such cases the word malice must be taken not only in its literal meaning, but also as meaning personal spite, for personal spite was malice in every sense of the word. It was quite right that everybody should prosecute everybody, if they had broken the criminal law; but everyone must know that it was a most serious thing for respectable persons to be dragged into a criminal court unless the criminal law had been broken. The report put in in that case was a report presented by Mr. Morris to Court Unity, and it was read at a specially summoned meeting of the court members; but at that meeting all persons who were Foresters had a perfect right to be present. It was nonsense to his mind for Dr. Blake Odgers to say that no members of any other court outside Court Unity had any interest in the business or proceedings of this particular lodge. Every member of the great society of Foresters had a right to be present at any meeting of any court or lodge, and he was certain they all took a great interest in the administration of the public funds of the society for charitable purposes. The mere fact that by right every member of every court had a right to be present indicated that there was a common interest in the concerns of the whole of the courts comprising the society. That report was presented under proper circumstances and to persons who had a right to learn the position of the affairs of the court. When the case was before the magistrates there was no attempt made to show that the report was dishonest or that the plaintiff was in any way malicious, and there was a total absence of any reasonable cause for such a charge as was made against Mr. Morris. His experience in such cases was a very painful one. They generally arose out of some small inaccuracy or irregularity being practised, and very often they got to the criminal court. It was of very serious importance that the accounts of so great a society should be properly kept. Speaking of the members who were in arrear with their contributions, his lordship said he found amongst them the late secretary, a man in a superior position to the working-men who formed the great bulk of the society. That gentleman had not paid his contribution of 2s. 1d. a month. In four years there were 48 payments to be

made, but in two only was Mr. White not in arrear. One of his sons was 60 payments behind, and in only three instances was the contribution paid when due. Another son was also 60 payments in arrears, and in this case there were only three instances when the subscription was paid at the right time. All these persons were in a position to pay their subscriptions at the proper time; but they did not, and yet they still remained on the books. There were also a number on the books who received benefits when they ought to have been suspended for arrears. Alluding to the item of £300 he said a mistake had been made there. That sum was advanced as a loan in certain amounts, and interest had been paid on these sums, but not on the £300 as a whole. He was surprised, considering the vast quantity of matter that had to be investigated, that there were not a good many more slips; but there was nothing in the whole report to justify White in taking Mr. Morris into the criminal court. If they (the jury) were convinced that the prosecution was malicious, and found for the plaintiff, let the damages be moderate, for in a case of that sort it was not intended to punish the person at fault, but to reinstate the plaintiff and let people see that after the case had been independently investigated before a judge and jury they had come to the conclusion that the prosecution ought never to have been instituted. There was one fact they must not lose sight of if they found for the plaintiff, aud that was that the plaintiff had proved costs of over £30.

After about 15 minutes' consideration the foreman of the jury announced that the jury found for the plaintiff, and assessed the damages at £120.

Judgment was entered accordingly.

CASE 179.

BARNSLEY POLICE COURT. 1893. *Nov.* 15.

THE QUEEN *v.* RHODES.

Friendly Society—Defaulting Secretary—Withholding of Books and Moneys belonging to—Conviction.

A case which should serve as a warning to local friendly societies came before the Barnsley magistrates on Wednesday, when John Rhodes, described as a storekeeper, Worsbro' Dale, who has recently been employed at the Swaithe Main and Rylands' Main Collieries, was charged that he, on the 16th day of August, having then in his possession certain property—to wit, two books and a sum of £5 12s. 10d. in money—belonging to the Loyal Queen Caroline Lodge of the Barnsley District, Independent Order of Oddfellows, Manchester Unity, did unlawfully withhold the same. Mr. Rideal appeared to prosecute, and Mr. J. Raley (Messrs. Dibb and Clegg) defended. The magistrates on the Bench were Mr. T. Norton (presiding), Mr. C. Harvey, and Mr. Z. Hinchcliffe.

In opening his case, Mr. Rideal said the facts were rather involved, but he hoped to be able to prove that defendant had received and given receipts for certain amounts which he had not handed over to the treasurer. Defendant had acted as secretary to the lodge for sixteen years, but in February last, in consequence of what was thought about him by several of the members, a special meeting was held to get rid of

him, and a resolution was passed removing him from office, and calling upon him to deliver up all books and moneys. He failed to do this, and proceedings were taken against him on February 25th, when an order for delivering the books was applied for.

Mr. Raley then made a technical objection that the meeting at which defendant was dismissed from office had not been called in accordance with the rules, and on account of that contention the case was adjourned. On March 24th, in consequence of defendant's handing over certain books containing entries extending from January, 1891, to February of this year, the proceedings were abandoned. The books thus handed over were audited in March and appeared to be correct, but subsequently the society found out that defendant had received remittances from the secretaries of other lodges which were not accounted for. These amounts consisted of the subscriptions of members who had left the district, but who continued to pay through the medium of the secretaries at the places where they had gone to. Contributions had been periodically remitted to defendant in this way, but no entry was made of a single farthing being so paid to him. He (Mr. Rideal) had in his hand receipts for four such amounts, all of them signed by defendant. Three of them were dated January 25th, 1892, and the other February 8th, 1892. Defendant had also been receiving contributions from his uncle, Wm. Mellor, who lived at Attercliffe, and who sent them to him direct, and those were not entered in the books either. Mellor had not got receipts, but he had his card of membership. These five items made up the £5 12s. 10d. which defendant was charged with withholding. At a meeting of the trustees, held when those facts became known, it was decided to ask defendant to meet the trustees and hand over to them the old contribution books and cash books which had been in use during his term of office. He (Mr. Rideal) was at the same time instructed to write a letter saying that unless defendant accounted for and handed over all moneys due and gave a full explanation, the trustees would have no alternative but to take legal proceedings. As defendant failed to comply, proceedings were taken accordingly.

Mr. Raley intimated that his defence was that the money had been paid over to the treasurer by defendant. They admitted the receipts produced by Mr. Rideal to be valid.

George Leach, foundry clerk, of Worsbro' Bridge, one of the trustees of the lodge, was the first witness. He said that in consequence of the proceedings taken there in March, he had two books, a contribution and a cash book, handed over to him by defendant. Those books commenced in January, 1891, and witness audited the entries for the year ending in March. Subsequently witness, in company with other members, waited upon defendant to ask him to hand over the old books, but defendant neglected to do so. They could not make anything of him. When asked about the contributions from non-residents, defendant said he had got his uncle's money, but the others were not yet paid. The trustees wrote to them, with the result that they discovered that the contributions had been paid as Mr. Rideal stated. As regarded the books, defendant promised to let them have them, and the March proceedings were withdrawn.

Cross-examined by Mr. Raley: Witness said defendant was very much in arrear with his own payments at the time of his discharge, being out of benefit. Witness audited the two books which defendant

produced with a view to finding out mistakes. The secretary's duty was to hand over any moneys to the treasurer at the next lodge meeting after he had received them. February 13th was the lodge night following January 25th (the date of the receipts), and the books showed £5 19s. 4d. received that night in contributions.

Mr. Raley asked if the items in the contribution book added up to that total, but witness, after looking at the books, appeared unable to give the information.

In response to further questions, he said it was usual for the secretary to take home with him such books as were in use.

After evidence had been given in support of the above statement, the defendant was ordered to pay a fine of £10 forthwith, the £5 12s. 10d. withheld, and the costs of these proceedings, or in default two months with hard labour. An order was also made for defendant to deliver up the books. The fine was paid by defendant's family.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 87, *sub-sec.* 3.

CASE 180.

GUARDIANS OF ST. LEONARD'S, SHOREDITCH *v.* MARSHALL.

MARLBOROUGH STREET POLICE COURT.

Friendly Society—Lunatic Member—Claim for Sick Pay on account of—Rules—Necessary notice not given—Summons dismissed.

Mr. Thos. Marshall, secretary to the Hearts of Oak Benefit Society, 17, Charlotte Street, Fitzroy Square, London, has been summoned before Mr. Newton, at Marlborough Street Police Court, by the Guardians of St. Leonard, Shoreditch, to show cause why he should not contribute sick pay to the amount of 9s. 4d. a week from the funds of the said society towards the maintenance of Charles Baber, one of its members, now in Colney Hatch Lunatic Asylum, and chargeable on the rates of the parish. Mr. Straight appeared for the guardians, and Mr. Besley for the society. Mr. Straight contended that the guardians were authorised to declare the lunatic on the sick fund of the society, and that he was entitled to the full sick pay of 18s. a week. Mr. Besley, on the contrary, contended that the guardians had no power to constitute themselves agents of a lunatic in placing him on the sick fund, and that, even if they had such power, the lunatic, being chargeable on the parish rates, was only entitled to the superannuation allowance of 2s. per week. He supported this view by the following quotation from No. 15 of the society's rules: "Any member being reduced to the workhouse to be allowed the same as a superannuated member, and also to be exempt from all contributions." Mr. Newton said that in his opinion neither the board of guardians nor their clerk could be constituted as the agent of a lunatic confined in their parochial asylum, and that, therefore, no proper notice had been given to the society as was required by the rules.

The summons was therefore dismissed.

N.B.—See Poor Law Amendment Act, 1879, 42 *Vic.*, *cap.* 12.

CASE 181.

CONDOVER PETTY SESSIONS. 1877. *Sept.* 28. GUARDIANS OF ATCHAM UNION *v.* PRINCE OF WALES LODGE, M.U.I.O.O.F.

Friendly Societies Act, 1875 (39 & 40 *Vic.*, *cap.* 61), *sec.* 23—*Lunatic Member—Claim by Guardians for maintenance of—Rules—Liability—Application refused.*

A case of great importance to the members of friendly societies was heard at Condover Petty Sessions, at Dorrington on Friday last. The plaintiffs were the Guardians of Atcham Union, and the defendants the officers of the Prince of Wales Lodge of Independent Order of Oddfellows. The magistrates, who heard the case were Colonel Corbett (chairman), H. de G. Warter, Esq., Montague Hulton Harrop, Esq., and Captain Cotes, who took his seat on the Bench for the first time. Mr. Henry Morris appeared for the guardians, and Mr. C. Chandler for the lodge. The summons was issued to recover from the lodge the sum of £23 6s. 3d., for the maintenance of a pauper lunatic, a widower, without any family dependent upon him, who was a member of the lodge.

Mr. Morris said there were certain facts in the case upon which Mr. Chandler and he were agreed, and as it was probable, whichever way the decision of the Bench went, that a case would be applied for, he should like those points taken down. On the 15th of August, 1876, a man named Robert Meredith, being a lunatic, was sent to the Shropshire and Montgomeryshire Asylum, and became chargeable to Atcham Union, he being at the time a member of the Prince of Wales Lodge. He remained chargeable to the union until the 20th of June, this year, at the weekly rate of 9s. 11d., and the Atcham Guardians had paid altogether the sum of £23 6s. 3d. to the treasurer of the asylum for the care and maintenance of the lunatic, which sum included £1 8s. 6d., paid for the medical certificate and the expenses of removal. Application had been made to the lodge for payment, and the guardians now claimed the amount from the lodge under the provisions of 39 & 40 Vic., c. 61, s. 23. Next came the important point. Under the lodge rule No. 38, "every member being good on the books, and becoming unable to follow his employment, shall be entitled to receive 10s. per week for fifty-two weeks, whether consecutively or at various times." Now, he believed Mr. Chandley would not deny that Meredith was "good on the books."

Mr. Chandler said he was quite willing to admit as much as possible in order to shorten the case, but he certainly thought that Mr. Morris should prove all that the Act of Parliament required.

Mr. W. Salt (magistrates' clerk) said it seemed to him that if it was admitted that Meredith was a member of the lodge, as it had been, it was also admitted that he had duly paid his subscriptions.

In reply to a remark from the Bench, Mr. Chandler said the Act of Parliament under which the proceedings were taken was a new one, and it required that certain things should be done. First of all, the magistrates must be satisfied that the man is really entitled to sick pay, and in this case he urged that the proviso of the Act had not been carried out. The proviso was as follows: "That this clause shall not have effect unless and until the guardians or their relieving officer shall have

declared the relief to be given on loan, nor in respect of any relief granted contrary to the rules and orders made under the authority of the statutes in that behalf." He (Mr. Chandler) would call upon his friend to produce his notice of loan.

Mr. Morris said that the relief was declared to be by loan.

Colonel Corbett: When was that declaration made?

Mr. Morris: At the time the relief was granted.

Mr. Chandler: I want the date of the service of the notice of the loan upon the club.

Mr. Morris then read the following clause from the Act: "Where any pauper shall be entitled to any annuity or periodical payment the trustee, or other person bound to make payments of the same to the pauper, may from time to time pay to the board of guardians, or any union or parish, out of the instalments which have become due, the cost incurred in the relief accrued since the last instalment, and such payment shall be a legal discharge to such trustee or other person for so much money as shall have been so paid."

Mr. Chandler: That clause says where the pauper "is entitled," but we say that he was not entitled in this case on account of his own intemperance.

The chairman: Then you say that there was no declaration of a loan served upon the club; and you raise another objection that the lunacy was brought upon himself by excessive drinking. Either of these would be sufficient in themselves if you can prove them.

Rules 37, 38, 39, 41, and 42 were then put in by Mr. Morris; and Mr. Chandler and the clerk remarked, with respect to one of them, that there was always a difficulty in regard to the giving of a legal notice on the part of a lunatic.

Mr. Chandler pointed out that it was very important that a club should have notice. The man may be in London and the club in the country, and the club, unless notice was given, would have no opportunity of inquiring into the case.

Mr. Morris said a claim was made by Mr. Everest, the clerk to the guardians, and he had a letter in reply from the secretary of the lodge. On the 9th of June, this year, Mr. Everest made a claim for £17 3s., which was up to the 25th of March, and on the 27th of June he made a second claim, which was for £6 3s. 3d., making £23 6s. 3d. altogether. The patient was discharged as cured on the 20th June. The letter received from the secretary of the lodge was to the effect that a meeting of the lodge had been held, and that as Meredith had not been declared upon the funds of the lodge, in accordance with the rule, he was not entitled to sick pay. He would call Mr. Battersby, who would prove that the relief was given by way of a loan, and that it was subsequently confirmed by the board.

Mr. Thomas Battersby said: I am the relieving officer of the Shrewsbury district of Atcham Union. I know Robert Meredith. I removed him to the asylum. I think about a week or ten days after the removal

I met with Meredith's son-in-law (Mr. Sanson), who gave me to understand that he (Meredith) was in benefit, and I reported it. When I removed him I had an idea that he was in a club, but I did not know whether he was in benefit or not till I saw Sanson. I heard the guardians make the order "by way of loan." I am not aware that there was any public notice of it.—To Mr. Chandler: I have something to do with the books. The chairman said it was to be by way of loan. I do not know who the chairman was. I did not convey the order to the club. The lunatic has been in the asylum before, two or three times. I do not know that he has ever been there in consequence of his suffering from *delirium tremens*. I do not know that he has suffered from excessive drinking.

Mr. Joseph Everest: I am clerk to the Atcham Board of Guardians. It is within my knowledge that the man was removed to the asylum and maintained by the union. My attention has been called to the proviso at the end of section 23 of the Act quoted, and the matter was brought before the guardians at their meeting on the third Monday in August, last year, which was the first meeting after the admission of Meredith to the asylum. The guardians instructed me, as usual, to take the necessary steps to recover the costs.

Mr. Morris: This is, I think, only one of many cases of the sort that have come before the board.

Mr. Chandler: What! since the passing of this Act?

Mr. Everest: The relief by loan is not under this Act of Parliament.

Colonel Corbett: What I want to know is this: When this relief was first granted were you at the same time instructed to recover the amount?

Mr. Everest: At the next meeting.

The chairman: The point is, whether the declaration was such a declaration as is required by the Act.

Mr. Everest: This is one of several instances in which the board have declared relief to be by loan. The practice is, first of all to apply for the amount, and if the people do not pay then I go to the board, and they give me the necessary authority to proceed under seal. That authority I produce in this case. The money has, I believe, become payable once every three months by the board to the asylum. I had the notices served under 39 & 40 Vic., c. 61. For the money to be recovered it must be advanced by way of loan.—To Mr. Chandler: This authority was given to me after the man had left. I have not declared to the lodge that the relief was given by way of loan, otherwise than by the notices and letters, which were subsequent to the man being admitted. The £17 was incurred before we applied to the lodge.

Mr. Chandler: Or made any application whatever?

Mr. Everest: I am not sure of that. The first relief was granted by the board on the third Monday in August, 1876, and I wrote the first letter to the club on the 9th June, 1877, I believe.

The chairman: That was ten months after the man was sent to the asylum.

Witness: The only notice I gave to the club was the notice I always give in cases of that sort. I cannot say who was present at the board meeting when it was stated that the relief was given by way of loan. Sanson, the son-in-law, was not present when the relief was given. I saw Meredith once. He was a lunatic then. I have a copy of the medical certificate.

(A minute in one of the books of the club was here shown to the witness, and he admitted that it was signed by the late relieving officer, Mr. Baker. It was to the effect that he believed he had entered on the lunacy certificate the cause of Meredith's insanity to be inveterate drinking.)

Mr. Everest: There is nothing to that effect on the certificate. I do not myself know that the man was a drunkard. Meredith has been in the asylum four or five times, and for as long as nine months at a time. I formerly made a claim against this club, but it was withdrawn in consequence of the difficulty of proceeding under the old Act. We have now proceeded under the new Act, and I say that we are not bound to give notice to the club under the proviso alluded to.

This completed the plaintiff's case, and Mr. Chandler, in defence, said: In appearing before you on behalf of the Lodge 2,185, my first duty is to remind your worships that although only the sum of £23 6s. is in question, yet the importance of this inquiry must be measured by the effect it may have upon, I will not say hundreds, but thousands of lodges of Oddfellows, Foresters, and other friendly societies now doing great and good work throughout England by the encouragement they give to men to lead prudent lives, and I will venture to say by conferring a much greater benefit upon the community at large by keeping down poor rates than is generally credited. I have already admitted, on behalf of my clients, that they by no means dispute their liability, under the 23rd section of the Poor Law Amendment Act, c. 61, to contribute to a pauper lunatic sick pay during the time of his confinement in an asylum (whenever that terrible malady has not been generated by habits of intemperance or other imprudent conduct). It will, I think, be in the recollection of some of you that this 23rd clause was introduced into the House of Commons in committee, with the view of meeting a difficulty frequently arising, viz., a man having by his imprudence brought himself into a state which necessitated his confinement in a lunatic asylum, immediately upon his discharge therefrom received from his club the amount payable to him for sick pay during the time he had been in the asylum, and but too frequently, with this very pay, began a repetition of his habits of intemperance. It was to meet extreme cases of this kind that safeguards were introduced, as I contend, to protect the friendly societies as well as the guardians. You will see that the first two paragraphs clearly contemplate that the pauper lunatic "shall be entitled to receive any payments, etc." Two things arise here—(1) The lunatic must have done nothing to disentitle him to the pay: (2) The money payable to the lunatic in respect of sick pay granted by them is all that can be recovered or attached. The words in the first clause are, "Any person bound to make payment to the pauper." It does not say, "bound to make payment to anyone else." Now, gentlemen, I come to what I call the great safeguard of this Act for protecting the interests of friendly societies, which limits the operation of this Act to a great extent. At the end of the clause the

all-important provision follows : " That this clause shall not take effect unless and until the guardians or their relieving officer shall have declared the relief to be given on loan." I will read you the clause : " Provided that this clause shall not have effect unless and until the guardians or their relieving officers shall have declared the relief to be given on loan, nor in respect of any relief granted contrary to the rules and orders under the authority of the statutes in that behalf." My interpretation of this is, that the moment the guardians or their officers are aware that the lunatic is a member of a club, and, as such, entitled to pay, they must declare to the officers of such club that their relief is given on loan. Bear in mind, this giving on loan is an exceptional and unusual mode of giving relief. The very object of the clause is that the society to which the lunatic belongs should not be taken by surprise, but that facilities should at once be offered for the officers of the lodge to make the necessary and preliminary inquiries which are enforced upon them by their rules, as also to obtain the opinion of their own medical officer on the case, whose certificate they are strictly bound to recognise before granting relief. Look, for instance, how fatal to the interests of a society it would be if a lunatic non-resident in the district were to be confined in an asylum two hundred miles away from his mother lodge. At the end of nine or ten months (as in this case) a claim for a large amount would suddenly take the members by surprise, without ever giving them a chance of making the slightest investigation into the conducing causes of the ailment. My friend, Mr. Morris, contends that a whisper in the boardroom from Mr. Everest to any member or official of his board is a sufficient declaration of a loan. This proposition is so inconsistent and palpably at variance from the intention of the Act that I will not dwell upon it. Nay, I go further, and say that had an entry been made in that officer's minute-book, and had he posted a copy thereof on the doors of the boardroom, this would not be a compliance with the proviso, nor a sufficient declaration of loan within the meaning of the Act. I therefore ask you with great confidence to dismiss this summons, on the ground that no proper notice has been given to the society that the relief was being granted by way of loan. Mr. Chandler then called the following evidence :—

Charles Henry Williams said : I am secretary to the lodge. I have known Meredith for nine or ten years. During that time I recollect his being suspended for being drunk on the 12th June, 1869 ; also in February, 1872, for being drunk while on the funds ; and in August of the same year he was suspended for twelve months for being drunk and working while receiving sick pay. I produce a certificate from the late Mr. Willett, the medical officer of the lodge, to show that in February, 1875, Meredith was suffering from dipsomania, and in March of the same year another certificate of a similar character was received by the lodge. Meredith was sent to the lunatic asylum, and there was a claim made for his maintenance. We refused to pay the claim on the ground that the man was there in consequence of drunkenness. The guardians did not press the claim. If we had received notice in this case we should have made an early investigation. I did not know that the man had gone to the asylum till I received the letter from Mr. Everest. There is no desire on the part of the lodge to ignore payment to lunatics if the lunacy is not produced by bad conduct. We are paying for one now at Aylesbury.—To Mr. Morris : I have been secretary of the club three year next Christmas. After he came out of the asylum in 1875 we gave

Meredith £3 as a gift, owing to his distressed position. He made a claim for £13 sick pay. We can make a gift to any member in distress, under the rules.

Francis Dearlove: I am at the office of Messrs. Burd. I am a past officer of the lodge, and have filled the office of minute secretary, and have been acting minute secretary (when required) more or less for seven years, in consequence of having been a regular attendant at the lodge during that period. I produce the minute-book of the lodge, some portion of which is in my handwriting. I know that Meredith has been suspended for drunkenness on several occasions. In December, 1871.—Colonel Corbett: Can you say whether this last illness was brought on by drunkenness? The man might have been a teetotaler for years since then.—Mr. Dearlove: Knowing what they did of Meredith, the lodge would have made a full inquiry into the case if they had received notice, but the first intimation they got of the man being in the asylum was in last June. If the matter had been reported on loan declared by the Atcham Board, he should have asked the lodge to send a doctor specially to examine the man, but they had no chance whatever of doing so.

Colonel Corbett said his idea was that the notice must be given to those who had to repay the money.

Mr. Warter: I cannot see that, but I have three against me.

Mr. Morris said he feared Colonel Corbett was in possession of information that he was not.

Colonel Corbett said it certainly seemed to him that the clause was perfectly useless unless notice was given to those who were expected to pay. It was a clause that wanted a legal interpretation.

Mr. Warter said he thought if they had an entry upon the minutes of the board to the effect that the relief was granted by way of loan, it would answer the purpose.

Colonel Corbett: But would an officer of the club have a right to examine the minutes?

Mr. Morris said they would not.

The court was then cleared, and upon the public being re-admitted, Colonel Corbett said the majority of the Bench was of opinion that the proviso alluded to had not been complied with. He thought however, it was a proper case to take an opinion upon, for the clause certainly wanted explaining.

Mr. Chandler asked for the costs of the case in the event of the guardians not proceeding with the case, which was granted, and, on the application of Mr. Morris, a case was granted also.

N.B.—See Poor Law Amendment Act, 1879, 42 *Vic. cap.* 12.

CASE 182.

BOROUGH MAGISTRATES.

GUARDIANS OF THE MERIDEN UNION *v.* BROWN.

Friendly Society—Lunatic member—Claim by Guardians for maintenance of—Rules—Summons withdrawn on terms pending further proceedings by Guardians.

Charles Brown, secretary of the Earl of Durham Lodge of the Independent Order of Oddfellows, M.U., Bewdley branch, Bewdley, was summoned as trustee or manager of the said friendly society, by Jonathan Needham, relieving officer to the Guardians of the Meriden Union, to show cause why an order should not be made upon him to pay such sum or sums of money to the Guardians of the Meriden Union in or towards the repayment of the costs of maintaining William Mills, a member of the said Earl of Durham Lodge, No. 2,484, a lunatic. The hearing of this case was very complicated, and occupied the court a considerable time, Mr. Burcher, of the firm of Burcher and Saunders, Kidderminster, solicitors, arguing the various points raised with considerable tact and judgment on behalf of his clients. The secretary of the Earl of Durham Lodge, Mr. Charles Brown, and Joseph Humpherson, Corresponding Secretary of the district, attended to watch the proceedings on behalf of the friendly society. It appeared that William Mills formerly resided at Bewdley, but has lately come into the Meriden Union district. On the 6th of August last he became a lunatic, and on the following day he was removed by the relieving officer to the asylum at Hatton, and became chargeable to the common fund of the Meriden Poor Law Union, being at the time a member of the society and entitled to sick pay of 5s. per week, which he received up to the time of his removal to Hatton. Application was made to the secretary, Mr. Brown, in writing, for repayment of the sum expended on Mills's maintenance by the guardians since his admission into the lunatic asylum, and which relief Mr. Needham declared he had given written notice to the secretary and informed Mills's wife it was given solely as a loan. Mr. Brown replied that he would call a lodge specially to consider the question, but no further information had been received so far as he (Mr. Needham) was aware in the absence of Mr. Seymour, clerk to the board of guardians. Mr. Burcher contended that the relieving officer had not the power to act independently in this matter, that the orders of the guardians must be given in writing, and that no such orders had been so declared that the relief given was by way of loan. He produced the rules of the lodge, which was confederated with five other lodges in the Bewdley District, and endeavoured to show by the 25th rule that payment was forbidden by way of relief to members, while in a workhouse or a lunatic. It was reciprocal—the members paid no contributions during such times or received benefits, but on their recovery they were reinstated to the same privileges as before. The Bench, looking at the rules, said the rule on which the defence was rested upon had been made since Mills's removal to Hatton, and it was clear to them he would not have consented to that rule when he became a member. The officers asserted, however, that the rule in question was made in January last, but had not been certified by the Registrar of Friendly Societies for some months afterwards. Ultimately it was mutually agreed that the summons should be withdrawn on the payment of £1, as the amount payable up to the 6th of September last, without prejudice. This leaves the question open from that date to be dealt with by further proceedings.

N.B.—See Poor Law Amendment Act, 1879, 42 *Vic., cap.* 12.

CASE 183.

DEWSBURY WEST RIDING MAGISTRATES. 1878. *Aug.* 12.

GUARDIANS OF THE DEWSBURY POOR LAW UNION *v.* THORNTON.

Friendly Society—Poor Law Amendment Act, 1876—*Lunatic Member—Claim by Guardians for Sick Pay—Rules—Case dismissed.*

On the 12th August, 1878, before the Dewsbury West Riding magistrates, the following charge was laid against David Thornton, one of the trustees of the Salvation Lodge, Kirkburton, of the Independent Order of Oddfellows, Manchester Unity, that he had neglected and refused to pay the sum of £8, due to Joseph Dyson, a member of the lodge, who had lately become insane, and who was now a pauper patient in the West Riding Lunatic Asylum, at Wakefield. The claim was made by the Guardians of the Dewsbury Poor Law Union, and Mr. Peace, clerk, applied on their behalf, and contended that under the 23rd section of the Poor Law Amendment Act of 1876 the defendant was liable. Mr. Sykes, of Huddersfield, who was for Mr. Thornton, argued that the trustee of a lodge was not the person to be sued, he not being liable, and referred to a case tried at Swinton, where the same objection was taken and the case dismissed. He also put in a rule of the society, to show that no person who became insane was entitled to benefit, because of his loss of reason. The case was dismissed.

N.B.—See Poor Law Amendment Act, 1879, 42 *Vic., cap.* 12.

CASE 184.

MERTHYR POLICE COURT.

GUARDIANS OF MERTHYR UNION *v.* PHILLIPS AND OTHERS.

Friendly Society—Poor Law Amendment Act, 1876—*Claim by Guardians for payment of funeral expenses of deceased lunatic member—Registration—Rules—Limit of liability—Case dismissed.*

At the Merthyr Police Court, on Monday (before Mr. J. Bishop, stipendiary, and Mr. T. Williams), a point of more than ordinary interest respecting the relations of boards of guardians and friendly societies was argued. Mr. F. James, clerk to the guardians, appeared on behalf of that body to support a summons calling upon Thomas Phillips, Thomas Jones, and Thomas William Evans, of Rhymney, to show cause why they should not pay to the guardians a sum of £8, due by a lodge of the Ancient Britons' Friendly Society, Dowlais and Merthyr Unity, held at Rhymney, on account of the death of a man named Farr, who was an inmate of the county lunatic asylum. Mr. Plews appeared for the defendants. The case, which occupied the court over two hours, attracted a good deal of interest. Mr. James said that the proceedings were taken under the 23rd section of the Poor Law Amendment Act, 1876, against which the members of the clubs kicked a great deal. This section set forth that where the guardians incur any expense in the relief of a pauper lunatic who was entitled to relief from

a benefit society, they might recover from him or his executors or representatives, in case of death, the amount expended by them, and might apply to the magistrates to make an order for such payment, but the Act provided that this clause should not have effect unless, and until the guardians or their relieving officer, shall have declared the relief to be given on loan, nor in respect of any relief granted contrary to the rules and orders made under the authority of the statutes in that behalf. Fred Farr was a considerable time since sent to the asylum, where his maintenance cost the guardians 9s. 3d. per week. Mr. Plews pointed out that the wrong Christian name was attached to the summons, but this was amended by the stipendiary. Mr. James, proceeding, said that Farr was sent to the asylum about the 5th of February, 1878, and application was made to the club of which he was a member—the Ancient Britons, Unity of Dowlais and Merthyr, Rhymney Branch—for the sick relief to be paid over to the guardians, which was regularly done up to the time of his death, on the 26th of October last. The money was paid by the Rhymney Lodge, which, Mr. James asserted, was a branch of a registered society, and, therefore, came under the registered rules of the Order. Mr. Plews argued that the rules of this branch were not registered. Mr. James said if this was the case the guardians were out of court, but he would call witnesses to prove the connection of the Rhymney Lodge and the headquarters of the Ancient Britons Society at Penydarren. Thomas Wm. Evans, treasurer of the Rhymney Lodge, was about to be put into the witness box by Mr. James, when Mr. Plews objected, as he was one of the defendants. The stipendiary over-ruled the objection, and Evans was sworn, and said that the members of the Rhymney branch did not contribute to the Order, but paid into their own branch, which was not enrolled. The funeral money was first paid by the lodge, and afterwards repaid to the lodge by the district at the quarterly meetings. They did not use the rules of the Order in their entirety, but made their own rules as they thought proper. Mr. James was about examining the witness upon various other points to show the connection of the Rhymney Lodge with the general Order, but Mr. Plews objected to the witness giving any evidence which could be proved from the books, no notice to produce which had been served upon the defendants. He also objected to the witnesses stating whether the deceased man Farr was a member of the lodge, which he also required to be proved from the records. Evan Jones was next called and said he was the Corresponding Secretary of the Order. Two sets of rules had been enrolled since the copy produced by Mr. James was in use, the latest alteration being made so late as the 8th October, 1878. Mr. James: And Farr died on the 26th. Witness said that the sum to be paid at the death of a member (£8) was the same as previously, but the amount was secured to the wife or the personal relative of a deceased member. The districts were branches of the Unity, as the lodges were branches of the district. There was a lodge belonging to the district held at the Clarence Inn, Rhymney. The further evidence of this witness was objected to by Mr. Plews, as was also that of Thomas Jones, secretary of the Rhymney District, it being urged by Mr. Plews that this evidence should be proved by the books of the Order, as it was intended to prove the connection of the deceased with the lodge, and the lodge with the Order. The stipendiary said in that case the matter must be adjourned, as the books were not in court. The last witness stated that the rules of the lodge were not registered, and were not even in print. They were continually altered as the lodge thought necessary. Mr. James said that on the 11th of November the

guardians were willing that Edward Farr, who buried his father, should have £5 out of the £8 paid by the lodge; but they were informed that the funeral did not cost anything like that amount, and they then claimed the whole of the £8. In answer to Mr. Plews, T. W. Evans said that the bye-laws of the lodge differed in many respects from the laws of the Unity, and were not registered. Mr. D. T. Morgan, relieving officer, proved that Farr was sent to the asylum by the guardians. The club had paid all the relief money up to the time of the man's death. Mr. James said he claimed, under the 50th of the society's rules, whereby the friends of a member of fifteen months' standing were entitled to £8. Mr. Plews argued that these rules were not binding upon lodges, as they could make their own laws, and also that the Poor Law Amendment Act did not make any reference to funeral money being paid to the guardians, but only dealt with the sick fund payable to a member during his life. In this case the guardians did not incur a single sixpence expense for the funeral of the deceased, the cost of which was borne by the relatives who were entitled to receive the death money from the club. He would ask the court to adjourn the case upon the other objection he had raised as to the non-registration of the lodge. In reply, Mr. James said that the cost of Farr's maintenance in the asylum was £17 odd, and there was still £10 due to the guardians after the payment of the sick money (8s. per week) to them by the club. He acknowledged that there was a good deal in the objection raised by Mr. Plews, and he thought there was quite sufficient grounds for sending a case to the superior court. What he contended was that the guardians really stood in the place of Farr's representatives. There was still £10 due to them, and he maintained that they were justified and entitled to the £8 due from the society. The guardians did not seek to make the club liable for more than was coming to the deceased. The Act of Parliament was by no means clear, and he thought it would be well to bring the matter before the stipendiary to determine. After some further remarks from Mr. Plews, the stipendiary reserved the decision until Monday next, when, should he decide against the defendants upon the first objection raised by Mr. Plews, arguments will be heard in respect to the other objections.

On the following Monday, at the Merthyr Police Court, the stipendiary—with whom was Mr. T. Williams—gave his decision in the case in which the guardians sought to recover £8, the sum due from the Rhymney Lodge of the Ancient Britons, Unity of Dowlais and Merthyr, on account of a member who died at the county lunatic asylum. Mr. C. Russell James now appeared for the clerk to the guardians, and Mr. Plews represented the officers of the lodge, who were made the defendants. The facts of the case were that about the 5th of February last a member of the Rhymney Lodge of the above Order, named Edward Farr, was sent to the county asylum, where he died on the 26th of October last. Up to the time of his death the 8s. per week due to Farr was regularly paid to the guardians by the lodge for his maintenance at the asylum, which amounted to 9s. 3d. per week. There was thus a deficit between the amount paid to the guardians and the cost of the man's maintenance of over £10, in satisfaction of which the £8 due from the lodge on account of Farr's death was claimed. The guardians, however, did not spend a sixpence in the funeral of the man, and the case was brought before the stipendiary in order that it might be seen in what position friendly societies stood in relation to the guardians in this particular. The proceedings were taken by the latter

under the 23rd section of the Poor Law Amendment Act, 1876, it being urged by the clerk to the guardians that they could claim the death money in payment of what was due for the maintenance of a lunatic member. On the part of the defendants, it was alleged that the Rhymney Lodge, although a branch of an enrolled Order, was governed by its own rules, which were not certified, and that, therefore, it could not be proceeded against; that the relief was not given by the guardians on loan; and further, that the Act did not give them power to claim the funeral money for relief during the time the member was alive—the £8 properly belonging to the relatives who buried him, and kept him in compliance at his lodge, in accordance with its rules. Some considerable argument took place between the stipendiary and Mr. Plews, who said he would not take the advantage of the non-registration of the lodge unless he was obliged. What he wanted was for the good of friendly societies at large to get an opinion from the Bench upon the Act of Parliament itself, and the legality of the claim upon the death money. He also drew attention to the rules of the society, which provided for the settlement of all disputes by arbitration. The stipendiary said he was in this difficulty, that no rules had been put in. Mr. Plews: Suppose you take it for granted that they were put in? He would go so far as to say that there was a lodge of the Unity at Rhymney, and that Farr was a member of that lodge. He would not, however, admit that the lodge was registered, although he was not going to raise the objection unless it was absolutely necessary. The stipendiary said the Bench did not shirk giving an opinion upon the Act of Parliament; but it was necessary that the facts should be admitted in order to bring the case under it, because if Farr was not a member of a registered society, he had no business dealing with the case. Mr. Plews could not admit that the lodge was registered. The stipendiary did not think it was proper that the Bench should give judgment upon a matter which was not before it. Mr. Plews said he wished to call the stipendiary's attention to the 22nd section of the Act of Parliament, which enacted that every dispute, or when a person claimed through a member, should be decided by arbitration, which decision should be conclusive, and the matter should not be carried into any court of law. The stipendiary, having given this matter his consideration, said he thought the case ought to have been submitted to arbitration. Mr. Plews urged that the guardians, not having made use of the powers given them, could not come into that court. He maintained that the Act of Parliament did not give them power to claim the funeral money, and supposing it did, they had not proceeded in the manner laid down by the Act, as they must apply under the same rule as any other person. The stipendiary remarked that Farr was dead, and therefore it could not be said that the guardians were claiming through a member. Mr. Plews said there were three persons applying for this funeral money—the son, who paid for the funeral, the widow, and the guardians. The only way to settle who was to have it was by arbitration. He maintained that the case must be dismissed, as the guardians had no claim beyond the sick pay given by the lodge during the life of the member. Upon the other two points, viz., the non-registration and the necessity for going to arbitration, he would not then enter. After some further argument, the stipendiary, in giving his decision, said that as Mr. Plews would not admit that the lodge was registered, he must go further, and say that it was proved that the society was registered, that Farr was a member, and that he obtained sick relief during his life. Having assumed these facts to be proved, the question arose whether, under section 23, the guardians

were entitled to recover the £8 due as funeral money from the lodge to the widow or representatives of the deceased, in payment of arrears on account of his maintenance. So far as he read the Act of Parliament he did not think the statute intended that money should be paid to the guardians further than what was due during the life of the member, and therefore he dismissed the summons, and refused to make the order asked for.—Mr. Plews applied for costs to be paid the defendants, but the stipendiary remarked that as the case was such a novel one, he would not grant them. The case was watched with great interest.

N.B.—See Poor Law Amendment Act, 1879, 42 *Vic., cap.* 12.

CASE 185.

MACCLESFIELD COUNTY POLICE COURT. 1881. *June.*

THE POOR LAW GUARDIANS OF MACCLESFIELD *v.* KETTLESHULME LODGE OF ODDFELLOWS.

Friendly Society—Poor Law Amendment Act—Lunatic Member—Claim by Guardians—Rules—Case dismissed.

At the Macclesfield County Police Court (June, 1881), before E. H. Greg, Esq., and Major Phillips.—The Poor Law Guardians *v.* Kettleshulme Lodge of Oddfellows.—This was an application upon a summons taken out by the Guardians of the Macclesfield Union against the officers of the Loyal Offspring of Truth Lodge of the Independent Order of Oddfellows, M.U., claiming to recover the sum of £2 14s., the amount of expenses incurred by the guardians in the maintenance of Henry Bradshaw Greenhough, a member of the above body, who was now an inmate of the asylum as a pauper; and also the sum of 4s. 6d. per week for such time as he remained chargeable to the guardians. The individuals sued were William Hewitt, jun., N.G.; Thomas Hill, V.G.; and William Jackson, secretary of the society, who were represented by Mr. Brown, solicitor, Stockport. Mr. Morgan (in the absence of Mr. J. F. May, clerk to the guardians) appeared in support of the summons. After the case had been fully argued, Mr. Brown said: The rules are certified by the Registrar of Friendly Societies. These societies can make their own rules controlling sick allowance; these rules are certified, and in their rules they say, "We will not pay in these cases." That being so, because a person happened to become chargeable, surely they were not liable. Mr. Morgan said he was not disposed to admit, on reading section 1 of the Poor Law Amendment Act, that the guardians could only recover the amount the member was entitled to recover. It appeared to him not to be so limited—"And where a pauper or pauper lunatic having no wife or relative dependent upon him, is entitled to any such moneys, no claim shall be made under the said Act by the guardians of an union or parish, upon any such society of which he is a member, or against any branch thereof, for the expenses incurred in his relief, *unless and until the guardians or relieving officers shall have declared the relief to be given as a loan*," etc. The clerk was of opinion that the guardians were only entitled to receive

that to which the member was entitled, and it was evidently a question whether under the rules he was entitled to receive anything. The magistrates, after consideration, decided not to take the responsibility of running counter to the rules. They thus allowed the objection, and the case ended.—Mr. Morgan asked the clerk to take a note of his objection to the validity of the point raised. Mr. Brown made an application for reasonable costs, which, however, the Bench declined to grant.

N.B.—See Poor Law Amendment Act, 1879, 42 *Vic.*, *cap.* 12.

CASE 186.

GUARDIANS OF CAISTOR UNION *v.* CLEAVER.

CAISTOR PETTY SESSIONS.
1891.
June 24.
Before
REV. H. C. BREWSTER,
C. W. GAUSSEN, ESQ.,
F. A. DORRINGTON, ESQ.

HIGH COURT OF JUSTICE,
QUEEN'S BENCH DIVISION.
DIVISIONAL COURT.
1891.
Nov. 30.
Before
THE LORD CHIEF JUSTICE OF ENGLAND
AND
MATHEW, J.

Divided Parishes Act, 1876 (39 & 40, *Vic. cap.* 61) *sec.* 23—*Claim by Guardians of Poor Law Union for maintenance of Lunatic Member—Friendly Society—Rules.*

Poor Law Amendment Act, 1879, 42 Vic. c. 12, enacts that moneys to which a pauper or a pauper lunatic may be entitled as a member of a Friendly or Benefit Society shall be applied for the maintenance of his wife or other relative dependent on him, and no claim may be made under 39 & 40 Vic. c. 61, s. 23 by the guardians of the union against the society.

Held that where the rules of a society provide that when a member becomes an inmate of a workhouse or lunatic asylum the benefit payable to him shall cease, that is a contract between the society and the member which will be enforced and the guardians' claim is excluded.

At the Caistor Petty Sessions, on Wednesday, 24th June, 1891, the Rev. H. C. Brewster (in the chair), C. W. Gaussen and F. A. Dorrington, Esqs., sitting as a Special Court, the above case was heard.

The magistrates' clerk (Mr. F. B. Cousans) read the information against the defendant as follows :—

In the County of Lincoln (parts of Lindsey) Petty Sessional Division of Caistor.

LINCOLNSHIRE, LINDSEY, TO WIT. } The appplication of George Robert Foster Haddelsey, being an officer of the Board of Guardians of the Caistor Union, in the said parts to wit, the clerk duly empowered by the said guardians in this behalf, by virtue of the statute in such case made and provided, made to us, the undersigned, being two

of her Majesty's justices of the peace in and for the said parts (being the parts wherein Charles Cleaver, hereinafter mentioned, doth now dwell), this 6th day of May, 1891, who saith that Thomas Clayton, late of the parish of Linwood, in the said parts and in the said union, being a lunatic, and being then chargeable to the said union, was, on or about the 20th day of December, 1889, properly removed to the Lincolnshire County Lunatic Asylum, at Bracebridge in the said County of Lincoln, by virtue of the statute in that behalf, where he hath been confined as a lunatic hitherto; that the said Thomas Clayton is now a lunatic; that the said guardians have, since the 28th day of June, 1890, paid for the maintenance of the said Thomas Clayton in the said asylum divers sums of money, amounting altogether to the sum of £15 18s. 6d.; and that the said relief was declared to be given by way of loan on account of the said Thomas Clayton, according to the form of the statute in such case made and provided; and that the said sum of £15 18s. 6d. now remains due and unpaid; and the said George Robert Foster Haddelsey further saith that the said Thomas Clayton, previous and up to the time when he became a lunatic, was, and still is, a member of the Loyal Heart of Honesty Lodge, No. 1,417, of the Independent Order of Oddfellows, Manchester Unity, Friendly Society, at Market Rasen, in the said parts, and in the said union, of which lodge Charles Cleaver is the secretary; that as a member of such lodge the said Thomas Clayton is entitled to sick pay. Whereupon the said complainant applies to us on behalf of the said guardians to issue our summons to the said Charles Cleaver to appear before us to show cause why an order should not be made upon him as such secretary as aforesaid to pay the said sum of £15 18s. 6d. and such sums as the said guardians are now liable to pay and to pay from time to time in future as the liability in respect of the relief arises hereafter.

Mr. S. F. Haddelsey appeared on behalf of the Caistor Board of Guardians; and Mr. William Cobbett (Messrs. Cobbett, Wheeler, and Cobbett), with him Mr. Waring (Messrs. Haxby, Partridge, and Waring, solicitors, Leicester) for the defendants, and also for the Manchester Unity of Oddfellows.

Mr. Cobbett: We will first admit the facts until we get them in order. We are not going to fight that the man is a lunatic, alive or not.

Mr. Haddelsey handed in formal certificate of chargeability.

Mr. Cobbett: The first fact to admit is that Thomas Clayton is now chargeable to the union, and confined in their pauper lunatic asylum at Lincoln. We both admit that. The next fact is that he became a member of the society in 1840, or upwards of twenty years ago—of the Oddfellows Society, Loyal Heart of Honesty Lodge in question. That he declared "on sick" with his lodge in May, 1889, that is, he made a claim for sick pay. That the lodge then commenced to pay him 10s. per week sick pay, and continued to do so until 23rd December, 1889, when it was stopped by resolution of the lodge (minute book produced). That Clayton became chargeable as a pauper lunatic on the 20th December, 1889. That on the 28th the board of guardians declared the relief to be on loan by resolution.

Mr. Haddelsey: They did not declare on until after that.

The last-named admission was withdrawn.

Mr. Cobbett then put in certain letters from the complainants to the defendant.

Mr. Haddelsey: The board of guardians declared it on loan previously, but did not give any notice to the secretary, and so on the 28th June they declared it on loan, and gave notice according to the Act, and it is only from that date they are claiming anything. On the 28th June they passed a resolution to give notice; and the clerk gave notice within the 30 days allowed, declaring the relief given to Thomas Clayton to be given on loan, and this notice was sent on the 11th July, 1890.

Read letter July 11th, 1890, from complainant to defendant.

Read letter July 24th, 1890, from defendant to complainant.

Mr. Cobbett: The next thing in order of date is a notice dated 10th September, given by the clerk of guardians to defendant, calling upon him, in pursuance of the rules of the lodge, to call a summoned meeting of the lodge for the purpose of determining the matter in dispute. It was a special meeting of the members with the object of considering the decision to which the lodge had come—not to pay. (Notice put in.) The next fact is that a summoned meeting of the lodge was held in pursuance of the notice, and at that meeting the resolution was passed which I now produce in the original minute book. (Minute book 21st October, 1890, produced and resolution.) That resolution was thoroughly discussed, and the chairman submitted it to the meeting. A vote was taken by ballot, and the result was as follows:—for the resolution, 32; against, 6. This resolution confirmed by a majority the previous resolution of the lodge.

Produced minute book of special district meeting on December 22nd, 1890.

Printed list of admissions put in.

The Rev. H. C. Brewster: I gather from this that the Heart of Honesty Lodge is a portion of the Louth District. First the clerk appeals to the Loyal Heart of Honesty Lodge, then to the Louth District, and then goes on to the Manchester Unity.

Mr. Cobbett: That is so. Now my impression is we have got all the facts complete.

Mr. Haddelsey: They admit the chargeability, the lunacy, and that he has no wife.

The Rev. H. C. Brewster: The Act makes provision for having a wife, but says nothing about not having a wife.

Mr. Cobbett: We admit he has no relative dependent upon him, and that the payments have been made by the guardians as alleged.

Mr. Haddelsey (addressing the Bench): I have not much necessity to state the facts of the case, I think they have almost all been gone into. This is an application of the Caistor Board of Guardians, under section 23 of the 39 & 40 Vic., c. 61, and section 1 of the 42 Vic., c. 12, under circumstances that have been practically set out already. Thomas

Clayton was a member of this Loyal Heart of Honesty Lodge, and admitted to Bracebridge Lunatic Asylum, and chargeable to the Caistor Union, and now he has become an inmate the lodge refuses to pay any sick money on his account. Several applications were made by the clerk of the board to the lodge, and the guardians declared the relief to be on loan on the 20th June, 1890, and notice was sent in accordance with the latter part of section 1, 42 Vic., c. 12, which says that within thirty days of declaration of relief on loan notice is to be given.

Mr. Cobbett: All this is admitted. Place yourself in order if you have any rights.

Mr. Haddelsey: On receipt of that letter, Cleaver replied that there was nothing to pay to the guardians or anyone else, but the guardians decided to try the case before the justices under the Act. I may mention that before doing that it was resolved by a majority of the board that proceedings under the rules of the Order should first of all be gone through, that is, they should appeal first of all to the Market Rasen Lodge itself in summoned lodge, then to a meeting of the district, and after that to the Board of Arbitrators of the Manchester Unity, in accordance with the rules of the Order.

The Rev. H. C. Brewster: When you took this course of applying to these people under the rules of the Order, you acted under the orders of the board of guardians distinctly?

Mr. Haddelsey: Certainly, sir. There is a resolution to that effect.

The Rev. H. C. Brewster: I make a note of that.

Mr. Haddelsey: I may say there were those who advised the board to proceed at once as we are proceeding now, but some thought we should go through the routine of applying in accordance with the Order before they came to the justices. The guardians got no redress from any of those various courts. The section under which we are acting is the 23rd section, 39 & 40 Vic., c. 61, which is as follows:—"Where any person "shall be entitled to any annuity or periodical payment, the trustee or "the person bound to make payment of the same to the pauper may "from time to time pay to the board of guardians of any union or parish "out of the instalments which have become due the costs incurred in "the relief of such pauper accruing since the last instalment, and such "payment shall be a legal discharge to such trustee or other person for "so much money as shall have been so paid. Where the guardians "incur any expense in the relief of a pauper lunatic, being a member of "a benefit friendly society, and as such entitled to receive any payment "they may recover from him as a debt, or from his executors, adminis-"trators, or assigns, in case of his death, the sum so expended by them "as aforesaid, and the managing body of such society, after notice "from the clerk to the guardians served previously to the money "being paid over, shall be required to pay the sum to such "guardians, and shall be exonerated on payment thereof from "any further liability. Where any trustee, manager, or other person "shall decline to make any payment, the guardians may apply to the "justices in Petty Sessions assembled, and such justices may, if satisfied "that it is right, make an order upon him to pay the requisite amount "then due to the guardians at once, and to pay from time to time as "the liability in respect of the relief arises therein. Provided that this

"clause shall not have effect unless and until the guardians or their "relieving officer shall have declared the relief to be given on loan, nor "in respect of any relief granted contrary to the rules and orders made "under the authority of the statute in that behalf." The other section and the next Act is 42 Vic., c. 12, s. 1:—"The provisions "contained in the 23rd section of the Divided Parishes and Poor Law "Amendment Act, 1876, shall not apply to any moneys which a pauper "or pauper lunatic, having a child, wife, or other relative dependent "upon him for maintenance, may be entitled to receive as a member of "any friendly society or benefit society, and such moneys shall, subject "to any deductions for keeping up his membership required by the rules "of such society or any branch thereof, from which such pauper or "pauper lunatic is entitled to receive, such moneys to be paid or applied "by the trustees, committee, or other officers of such society or branch, "to or for the maintenance of such wife or relative, and where the "pauper or pauper lunatic, having any wife or relative so dependent "upon him, is entitled to any such moneys, no claim shall be made "under the said Act by the guardians of any union upon any such "society of which he is a member, or against any branch thereof, for "the expense incurred in his relief, unless and until the guardians or "their relieving officer shall have declared the relief to be given on loan, "and shall have within thirty days thereof notified the same in writing "to the secretary or trustee of the society or branch of which the pauper "or pauper lunatic is a member and as such entitled to receive any "payment." That, of course, is the reason the relief was declared on loan on June 20, 1890. It had been declared on loan before, but no notice had been given, and no claim is made on that account. I will call your attention to the rules of the society, but first of all to the preface of the rules, where they say it is the duty of every man to provide against a time of distress, and also say in the last paragraph, "To all, whether members or not, the vast amount of good which can "be effected, of poor rates saved, sickness alleviated, medical relief "obtained, poverty prevented, and misery avoided by such societies "must be apparent. We have amongst us as honorary and financial "members, in nearly every county and country, the higher and wealthier "classes. To those who have not yet joined our ranks we say, come "amongst us, and assist us with your counsel and advice. To the "working classes we say, examine our rules, inspect our financial "statements, and, if you think us worthy, join, and provide for times of "need." In the objects of the society, on the following page, letter B, they say they provide for the relief or maintenance of the members during sickness or other infirmity, whether bodily or mental. The whole scheme of the rules appears to be that a member makes payment under one or other of these tables, and when sick becomes entitled to corresponding benefit in the shape of sick pay, and these objects and the preface to the rules, of course, say what the object of the society is, and when we come to rule 63 we find it says, "If a member is in a workhouse "or lunatic asylum, at the charge of any parochial board, no sick pay "shall be allowed, unless he has a wife or children, or some other "relative dependent upon him for support, when the amount due shall "be paid for their relief and maintenance; in all such cases the member "shall be kept good on the books." They state their object is to provide for times of sickness and that sort of thing, but they keep members out of benefit in cases of exceptional circumstances. The only case in which a member could derive any benefit after becoming a lunatic would be when kept at home, and not having to go to an asylum.

I wish to call your special attention to rule 63, and to the second paragraph of section 23 of the first Act, 39 & 40 Vic. I hold if this rule 63 is held good, the effect is simply to annul that section, and no society can pass any rules to annul an Act of Parliament, not even if Clayton assented to the rules when he joined. [Mr. Haddelsey here quoted Regina *v.* Somersetshire, Two Strange Reports, 992, which he put in.]

The Rev. H. C. Brewster: I presume these rules laid before us have the authority of by-laws.

Mr. Cobbett: They are registered and not like by-laws, but entirely on a different footing. They are different fundamentally than by-laws, as I shall show you by-and-by.

Mr. Haddelsey: We hold that no rules can annul an Act of Parliament. We say the club by this rule attempts to do this, and Clayton assented to this, but he cannot do so. [Regina *v.* Somersetshire; "There must come a peremptory mandamus, for the Statute 43 Eliz., "c. 2, says the balance shall be paid over to the new officers, under a "penalty; and it is not in the power of the Vestry to dispense with the "statute."]

Mr. Cobbett: I admit a resolution of a Vestry cannot over-ride an Act of Parliament. I shall be equally willing to admit the rules of a friendly society cannot over-ride an Act of Parliament. That is all that seems to show.

Mr. Haddelsey: Rule 63 was evidently carefully framed to meet this section 23. If you look at the second paragraph of section 23, "Where "the guardians incur any expenses in the relief of a pauper lunatic, "being a member of a benefit or friendly society, and as such entitled to "receive . . " The Manchester Unity of Oddfellows, when I appeared before them, said, "We don't try to over-ride the Act of Parliament. "Clayton is not entitled, and therefore the guardians or anybody "claiming through him are also not entitled." We accepted that reason, and are in just the same difficulty as before, and the object of the Act is defeated. The wording of the Act is, "Where the guardians "incur expense in the relief of a pauper lunatic (the word pauper "lunatic is used there), being a member of a benefit friendly society . . "they may recover, etc.;" and rule 63 says, "If a member is in a "lunatic asylum at the charge of any parochial board, no sick pay shall "be allowed." In other words if a member is a pauper lunatic no sick pay shall be allowed. We say this is a distinct attempt to over-ride the Act. We fail to see any difference between a pauper lunatic and a member in a lunatic asylum at the charge of a parochial board.

Mr. Cobbett: There is no difference.

The Rev. H. C. Brewster: You agree with that?

Mr. Cobbett: I do.

Mr. Haddelsey: That practically defeats this Act. Where the guardians are as such entitled to recover from him, his executors, administrators, and assigns, etc. In other words the legislature said certain debts were payable to guardians, and I hold the society have no power to say it shall not. The fact that the rules are certified and registered makes no difference. [Kelsall *v.* Tyler and others quoted.]

Mr. Cobbett: I admit that the registration makes no difference whatever.

Mr. Haddelsey: If rule 63 is to be upheld, we say it will defeat the intention of that Act of 39 & 40 Vic., and that the legislature itself did not think that Act a dead letter was evidenced by the passing a further Act, I referred to, two years later, namely, 42 Vic., c. 12, which limits the powers of guardians where a pauper lunatic has any wife or relative dependent upon him. If that Act was to have no effect, why should Parliament have limited its powers? I have not much further to add. Those are our arguments. We simply depend on that statute.

The Rev. H. C. Brewster: You depend upon those two statutes, 39 & 40 Vic., c. 61, and its amendment, 42 Vic. c. 12?

Mr. Haddelsey: Yes. Of course we maintain our action in going before the society was simply to give them an opportunity—we thought there was an injustice, and that the friendly society would like an opportunity to relieve it. So we went before them in that way, and gave them an opportunity to put this straight before coming before the justices.

Mr. Cobbett: That was very kind.

Mr. Haddelsey: We rely upon those statutes, and ask you to make an order. The Friendly Societies Act, 1875, section 22, says disputes are to be settled by arbitration, but this is on 39 & 40 Vic.

Mr. Cobbett: Yes, and our Act has been confirmed again and again up to last year.

Quoted Friendly Societies Act, 1875, section 22.—*Disputes.*—"Every "dispute between a member, or persons claiming through a member, or "under the rules of a registered society (or branch), and the society (or "branch) or an officer thereof [or between any registered branch under "the Friendly Societies Acts, or an officer thereof of any registered "society or registered branch and the registered society or branch of "which the other party to the dispute is a registered branch, or an "officer thereof; or between any two or more registered branches of "any registered society or branch, or any officers thereof respectively] "(*e*) shall be decided in manner directed by the rules of the society (or "branch) and the decision so made shall be binding and conclusive on "all parties without appeal, and shall not be removable into any court "of law or restrainable by injunction, and application for the enforce-"ment thereof may be made to the County Court."

Mr. Cobbett: I have two points to submit to the court I think of equal importance. But before I come to them, I wish to be allowed, with your permission, to make one or two general observations upon the case. The Act of Parliament under which the claim is made was passed in the year 1876. We are now in the year 1891, so that it has been passed something like seventeen years. Our society has been in existence during the whole of that time, and so has the rule about which so much has been said; but it has been left for the Caistor Board of Guardians to discover that we by our rule have been guilty of illegality, and attempting to annul the Act of Parliament. Our society has an enormous number of members extending over the whole of the

kingdom, and has to deal not only with individual members in every kingdom, but with various poor-law authorities where the members live. These cases are not individual. Of course there must be pauper lunatics all through the kingdom. They are not of unfrequent occurrence by any means, but the Caistor Board of Guardians is the first that has assumed this bold position, and say we attempt to annul the Act of Parliament and they are entitled to have this payment. I hope to satisfy you that this claim was founded upon a misapprehension of the position of the parties, and to the wording of the section to which so much allusion has been made. I wish first of all to clear away the Amendment Act. The Amendment Act does not affect this case one way or the other. It is a qualification of the original Act. The Amendment Act simply provides that the guardians should not be entitled to money in certain events, that is all. It was a negative provision which narrowed the rights of the guardians under the preceding section. It did not add to their rights and give them more than they had before, but took something away.

The Rev. H. C. Brewster: The two words "unless and until" confirm, to my mind, certain rights which have been curtailed by the early part of it.

Mr. Cobbett: The provision is a negative one. The provision under the other section shall not apply "unless and until." But what I want to point out to you is that it takes something away from the rights which the previous section gave to the guardians and adds nothing to them. That is, the effect of it is null so far as this case is concerned. It does not assist me or my friend. It simply deprives the guardians of money of friendly societies under circumstances by which they had, under the previous Act of Parliament, a right to those moneys; so that it appears to me immaterial for the purposes of the present discussion. My friend has alluded to it, and I allude to it to point out that in my judgment it has no bearing upon the question pure and simple. It simply deprives the guardians of something the 23rd section gave them. It simply prescribes a certain mode of procedure. It makes it a condition of enforcing their rights under the previous Act of Parliament. "You shan't do it until you have declared the money a loan, and have given notice of your intention to do it." I wish to point out, in my judgment, it does not affect the question now before the court. Let me call your attention for a moment to the material part of the 23rd section. That section says, "Where guardians incur expense in the relief of a pauper "lunatic, being a member of a benefit or friendly society, and as such "entitled to receive any payment." Now Clayton, the man in question, is a member of a friendly society. So far he comes within the Act, but one of the questions which you may have to determine is whether as such member he is entitled to receive any payment. Now with reference to that question I first of all propose to submit to you this—that whether he is entitled or not, is not a question for this court. It has already been determined by a competent authority, and this court is bound to accept the determination of that authority and act upon it, and cannot enquire to-day whether or not Thomas Clayton was entitled to receive any payment from this society at the period covered by the summons. The second point is—supposing this court is entitled to enquire whether Thomas Clayton was entitled to receive any payment from the society, that it appears unsuccessful upon the facts stated that he was not. I think the complainants have not sufficiently considered the meaning of

those words, "as such entitled to receive any payment." They mean, at any rate I contend they mean, that before the guardians can get anything they must make out that there is a legal obligation on the part of the society to pay Clayton—that there is a legal obligation to do it, one which Clayton himself, if he were not in a lunatic asylum, could enforce. Supposing the guardians had not troubled their heads about this matter at all, Clayton is in a lunatic asylum, and is a pauper. Supposing some person, acting on his behalf, took the necessary legal steps to attempt to obtain payment of his sick benefit from his society. If those persons, as representing Clayton, would be entitled to succeed in proceedings to recover that sick benefit, the guardians would; if they would not, the guardians would not. In other words, this statute makes the right of the guardians depend on the right of the pauper lunatic himself, and his rights depend upon whether or not there was any legal obligation of the society to pay him sick benefit when he is a pauper lunatic. That there must be a legal obligation binding upon the society has been the subject of a decided case, not decided in the days of Noah, but a case decided within the last year or two. The case I refer to is the case of Winder *v.* The Guardians of Kingston-upon-Hull, and is reported in 20 Queen's Bench Division, page 412, and in it the proceedings on the part of the guardians were under this same section, but the society in question was a trades union. I daresay the Bench know that every trade union has in its rules friendly society rules—that at the same time as they manage the trade union as a union they give benefits in the same way as a friendly society. This was an attempt on the part of the Guardians of Kingston-upon-Hull to compel the trade unions—that society in question, under its rules, to make such a payment as the guardians here are attempting to get from the friendly society for whom I appear. The question which arose was this—the union said, "No, we are an illegal society, and therefore our members cannot bring actions against us, and cannot legally enforce the benefits which we undertake by our rules to give to them." Entitled by Act of Parliament means legally entitled, and therefore you are not entitled to receive. That was upheld by the Superior Court. The case was argued for the trade union by Mr. R. S. Wright.

[Quoted—Mr. Wright.

,, Mr. Cyril Dodd.

,, Justice Mathew's judgment.

,, Justice A. L. Smith's judgment.]

I have quoted this case not so much upon the ultimate question, which I shall have to deal with later on, namely, whether a pauper is entitled or not, as to show you that the nature of his title must be a legal title. At the time the guardians make a claim, the man must have a right to that they ask for. This was a case where he was not entitled, because the agreement was an illegal one. He had a far stricter title morally in the case I have read to you, because no trade union rules excluded him. In this case the man was legally entitled to receive his money, the rules providing it should be paid to him. In our case the rules provide it shall not. So that this is a stronger case, looking at it from a moral point of view, than ours. What I wanted to point out to you is this, that under the rules of the trade union there was money to be paid to him at the time application was made. Under our rules the very

contrary is the case. It was here held that the guardians were not entitled to recover the money. But the reason I quoted the case is this —to show that what the courts have held to be the proper construction of the section, is that the person in respect of and through whom the guardians claim, must at the time of the claim be legally entitled to the money—that is to say the society must be under a legal obligation to pay. These complainants are persons who claim through a member of a registered branch of a registered society. In other words they claim through Clayton, and if Clayton is not entitled to the money they are not; and they claim through him and claim from a registered branch, because the lodge is a registered branch of an Oddfellows' Society which is a registered society. Whether Clayton is entitled to sick pay from the branch, and whether the guardians are entitled to enforce that claim——

The Rev. H. C. Brewster: Would the club ever pay the pauper lunatic any money to the pauper lunatic himself.

Mr. Cobbett: They would pay, if the rules admitted it, to any person on his account.

The Rev. H. C. Brewster: But not to the pauper himself?

Mr. Cobbett: The pauper could not give any discharge. Of course, they could not make any payment to him, but to a proper person on his behalf. Persons are appointed to represent the estate of lunatics, even in a small way.

Mr. Haddelsey assented that the guardians claimed through Clayton.

Mr. Cobbett: The guardians claim through Clayton, and they can have nothing but what Clayton is entitled to, and therefore they claim through him, and take his interest if he has any. The question whether Clayton is entitled to sick pay from the branch while he is a pauper lunatic is in dispute between the guardians, the persons claiming, and the society, and therefore comes within section 22 of the Friendly Societies Act, 1875, and it must therefore be decided in the manner directed by the rules, and it has been so decided, and decided hostilely to the guardians. My contention is that the conclusion is binding on the court, and this court must act upon it, and hold that Clayton is entitled to nothing while he is a pauper lunatic. I call your attention first of all to the Act of Parliament, and then to the rules. By section 22 of the Friendly Societies Act, 1875, an Act that is amended every year nearly, and is amended up to date, every dispute between a member or person claiming through a member (which the guardians, in my contention at any rate, are), and the society or branch . . . . . shall be decided in manner directed by the rules of the society or branch, and the decision so made shall be binding and conclusive on all parties that appeal. So that if the guardians are persons claiming through a pauper lunatic, he being a member (if the dispute has been decided in accordance with the rules of the society) that conclusion is binding upon them. I will point out now where the rules say the dispute shall be decided. The rules of the lodge, to take the small thing first of all, say, rule 33: "If any dispute arises between a member or any person claiming under or on account of a member, or under the rules, and the officers of the lodge, such dispute shall be settled pursuant to district and general rules." That is all it says, it refers you to the next.

Rule 44 of the district rules, page 12. This is practically the same thing. "If any dispute, etc. . . . . such dispute shall be settled subject to the general rules." So we are referred back to the general rules for information as to how our dispute shall be settled. Rule 75 says: "Every dispute between a member or person claiming through or under a member, or under these rules, or the rules of any lodge or district branch, and the society or any officer thereof, shall be decided as hereinafter provided. . . . . If any member or person claiming through a member, makes a claim on a lodge for sick pay . . . the lodge shall on its next meeting pass a resolution in reference to such claim . . . If any member or person claiming through a member, is dissatisfied with the resolution itself, or should the lodge refuse or neglect to take cognisance of his claim, or if he is dissatisfied with the decision, then he may appeal by written notice within three months . . . when the same shall be heard and adjudicated upon by a summoned meeting of the lodge." On another page we have rule 75, clause *b*, pars. 1 to 11, the sum and substance of which is this—that where a member or person making a claim through a member, or under the rules, is dissatisfied with the resolution of a summoned meeting of the lodge, and wishes to appeal, he is to give notice, and so forth, and the resolution is to be referred to the arbitration of a board of arbitrators. In the same rule, clause *c*, par. 1, we find that a person claiming through or under the rules, aggrieved at any resolution of a district meeting, may appeal to the arbitration of the directors. You have had before you the resolution of the directors, so that you see that the guardians have assumed themselves, and recognise themselves to be persons claiming through or under a member under the rules of the society, and have followed it with great accuracy, and proceeded by the prescribed methods in the matter, and have arrived at the decision which the rules of the society prescribe. Rule 75, c. 4, says: "All necessary conditions being complied with, the directors shall then hear the appeal, and shall have power to alter, amend, or rescind such resolution, or pass such other as the circumstances of the case may warrant; and their decision shall be final and conclusive, and binding upon all parties concerned, without power of further appeal." The Act of Parliament says that a dispute so decided shall be finally decided, and no further proceedings can be taken. Therefore, I urge upon the Bench that they have no authority to inquire into whether or not Clayton was entitled to any payment by this society; because that question in the dispute has been fully determined by statute, and by statute made final and conclusive on all parties. My contention is this—the justices are bound to hold that the society, in its own prescribed manner, has already decided Clayton is not entitled to any of the money claimed in this summons.

Mr. Haddelsey: The 23rd section of 39 & 40 Vic. says, "Where any "trustee, manager, or other person shall decline to make any payment, "the guardians may apply to the justices."

The Rev. H. C. Brewster (to Mr. Cobbett): Your contention is that the guardians have complied with the society's rules, and cannot go to the justices?

Mr. Cobbett: You must read that with reference to the preceding clause. It refers to a member entitled to receive payment. It is only where a member is entitled to receive payment that the guardians may apply to the justices in petty sessions assembled, and such justices may

make an order. If the justices find that by virtue of another statute a man is entitled to receive, has already been held to be null, then the justices have no option but to dismiss the summons. I come to my second point, and it is this. I am now assuming, for the purpose of argument merely, and subject to the first point, that the justices are entitled to inquire whether he is entitled to receive the money. It seems to me my friend has altogether misconceived the position of the pauper lunatic and the society. They are two parties to a contract—two parties to a bargain. The man who makes a bargain when sane is bound by it when lunatic. There are two parties to the contract—the society on the one side, and the member on the other. We hear it was entered into upwards of twenty years ago. That contract made between them was by the rules of the society. The rules of the society are considered the contract between the members of the society on the one hand and the society on the other hand. The member is entitled to no payment but what the rules permit, and the society is entitled to make no payment beyond what the rules call upon it to pay. The member is bound by the rules, and the society is bound by the rules. That is the bargain between them. There is ample authority for that position, because in a case decided recently in the Court of Appeal, but which is not reported anywhere except in Mr. Pratt's book on "The Law of Friendly Societies." The case is Schofield and others *v.* Vause and others, page 251. The case lasted four days, and received a judicial exposition from the Court of Appeal. It was a question between a friendly society and one of its lodges. The lodge allocated to itself certain independent rights. The society said: "You have not "those rights, you are simply a sub-division of our body, and you must "do as we tell you to do." The Court of Appeal (Justices Cotton, Bowen, and Fry) had to consider the fundamental construction of friendly societies, and what was their position between themselves and their members. I read from Justice Bowen, as putting in precise form the position of friendly societies. He said: "It seems to me that when you "get to the bottom of the case it determines itself by the application of "the very simplest principles of the law of construction. All members "of this lodge are members of the Order. That is fundamental. By "the act of initiation they become members of the Order, grouped in a "particular lodge, and promise that they will to the best of their ability "conform to all the rules duly passed by the authorised committee of "the lodge, district, or Order. The district and the lodge are not "different incorporations. They consist of an aggregate of individuals, "all of whom belong to the Order. That is the cardinal point of the "whole matter to my mind." There he describes the nature of the contract, and it is nothing else but a contract. A member enters into a contract with the society, which is defined by the rules, and his contract is this, or rather I should say, perhaps, the contract of the society with him is this: "You are to be entitled from us to every benefit the rules now secure to you, subject to any legitimate alteration," because you will find in all rules, there is always a rule which defines legitimate alteration. It must be a rule which must be passed in a certain way, and authenticated by registration. "I find I am to have certain "benefits—certain money payments subject to your legitimate altera-"tions of the rules—during my term of membership." That is the bargain he makes with the society. That being the position, what bargain did this man make with the society? The bargain this man made with the society was this: that upon his paying his contributions and observing the rules of the society, he was to be entitled to sick pay

(there are other benefits but they don't arise in this case), unless he was a pauper lunatic or in the workhouse.

The Rev. H. C. Brewster: There you see we want the date of the rule to make it a legitimate alteration.

Mr. Cobbett: It is legitimate whenever made. It must not be contrary to law, but to make it is not contrary to law.

The Rev. H. C. Brewster: We want the date of the rule.

Mr. Cobbett: Assuming it was done on purpose, it is none the less a legitimate alteration. What the Act of Parliament says is that the guardians are to be entitled to whatever the pauper is entitled to. If a pauper chooses to make a bargain with a friendly society, by which he is entitled to nothing if he becomes a pauper, the guardians are not entitled to anything.

The Rev. H. C. Brewster: You might make the order, but commit a hardship thereby.

Mr. Cobbett: This order does not commit a hardship. The society has feeling, and therefore is legal. We have a right to make any legitimate alteration of the rules, and it is a perfectly legitimate alteration of the rules to say to a man "You have been entitled to sick payment in any event, and we are now going to alter it to mean "entitled in certain events."

Mr. C. W. Gaussen: Passed against Act of Parliament.

Mr. Cobbett: The only thing the Act of Parliament says is, "If he is entitled to have it." The Act of Parliament does not say "No friendly "society shall make a rule which deprives a man of his sick pay if he is "a pauper lunatic." The Act of Parliament says nothing of that kind. The only thing it says is, "if he is entitled to have it the guardians are "entitled to have it." Therefore, the guardians are not entitled to have it. It is utterly immaterial when this alteration was made. Whereas this statute was passed in 1876, the justices may assume, for the purpose of argument, that the alteration was made in 1877, and that we made it because of the provisions of section 23. That does not make it illegal. The only thing the Act of Parliament says is, "if the man is entitled to have it the guardians may have it." We make a free bargain whereby he is not entitled to it.

The Rev. H. C. Brewster: The fact is, you make a bargain whereby a third party is detrimented and not consulted.

Mr. Cobbett: Which we are perfectly entitled to do. There is nothing in either Act of Parliament or statute which says, "if a friendly "society wishes to make a bargain that its members are not to be "entitled to sick benefits under the circumstances, that the guardians "are, notwithstanding, to have them." My friend has endeavoured to put an interpretation upon the statute which such words won't bear. The statute says nothing of the kind. There are at the present time many societies which make no such exception, and, of course, in those cases this statute would have the fullest possible application. The object of the statute as I understand it is this: If there is a fund from which a pauper lunatic is entitled, the board is entitled to it; then the

society which has this fund is not going to keep that money for itself, but it has to hand it over to the guardians. Therefore, guardians are getting the possible advantage of receiving moneys from societies where there is no rule which excludes pauper lunatics from benefit. They get the benefit of that whatever it is. It is not the intention of Parliament to say friendly societies shall not have the liberty of contract for their members. That is a monstrous position. If that had been intended, the statute would have said it in plain terms. It would be like the Hares and Rabbits Bill. There the statute intends to prevent freedom of contract. It intends to prevent landlord and tenant from making a bargain on a particular subject; and so it would have said so here if intended. Then, I would ask what public injury is done? I don't know that it is quite to the point, but it is a consideration at anyrate that perhaps is worth spending a minute or two upon. What injury is it supposed will be done if the guardians don't get sick benefit in some cases on account of this contract? You are invited to assume we have been making an illegal contract. It must be illegal from some definite point of view—contrary to public policy and the policy of this statute. The policy of this statute was to give guardians the money where the pauper was entitled to it, and not where he was not. If the policy of the statute is suggested to be an interference with the contract on the part of these societies with their members, what is the advantage that is going to be gained by it. The object of these societies is to encourage thrift; to keep people out of the workhouse; not to maintain them when in it. Their objects, which have been recognised by many statesmen, have been held to be very beneficial. It is not part of the objects of friendly societies to contribute to the rates for the maintenance of a man that is in the asylum. Their object is to keep him out as long as they can. When once he is in they recognise him as a pauper chargeable upon the local taxes, and it seems a strange thing, and a monstrous thing, to assume that by indirect provision, Parliament intended to prevent friendly societies from making a contract with their members of whatever nature they pleased, in order that, to that extent, local taxation should be relieved. I don't think that was the intention of the Act of Parliament at all. What was intended was that the money should not get picked and be absorbed by people who had no right to it. If the society was bound under its rules to make payment when the man was a lunatic, then it could be claimed. But in this case it says, "Our terms are, we maintain you with sick pay, but if you become a lunatic we do not."

The Rev. H. C. Brewster: Of course you pay it to the wife and children.

Mr. Cobbett: Oh, of course! but that does not arise in this case. This is an old man, and not likely in the ordinary course of human events to get out of the place he is now in. Supposing he was a young man, and in the place for twelve months he would be a full member, and the moment he became well again we should be bound to pay him his sick pay, and we are bound to keep up his subscriptions for him out of the fund we don't pay whilst he is inside. That is our bargain with him. It is a very intelligible bargain, it seems to me. We say to our members, and all of them know about this rule, and are invited in the preface to examine them if they would like to join us—which they do in this year of grace, after twenty-one years of Education Acts. They understand these rules very well, and understand perfectly well, but what do they

care? Does a man contemplate that when he enters with us? He says, "If I am a pauper lunatic, it does not very much matter to me what "becomes of my sick pay. My wife and children will have it if I have "not, and I shall get it when I come out again." He states the thing entirely. It is not a hardship upon him. It is no benefit to him if the guardians get this money. The whole contention resolves itself into this: Does the section prohibit friendly societies from making their own bargain with their members? In my judgment the words of the section cannot fairly be held to infer anything of the kind. I think I have placed you pretty well in possession of that point. But I think there is a matter which Mr. Haddelsey observed upon which I should mention, too, perhaps, before I close my arguments, and that is this. It has been suggested to you that rule 63 is illegal. I think it is in accordance with the statute. In my judgment the statute entitles the guardians to have money where a member is entitled to have it. In this case he is not entitled to have it, and the rule therefore is in no thing any contravention of the statute. The rule does not say where a man is entitled to have it the guardians are not to have it. The guardians are claiming money which the member is not entitled to have, and are therefore not claiming by virtue of the statute, but contrary to its rules. They say this rule is *ultra vires*, that means, it is a rule which the society have no power to make. I have already pointed out that the statute does not prohibit them from making it. Freedom of contract, although it has been marvellously interfered with in many ways lately, is one of those things that used to be called an Englishman's birthright. You have a right to make any bargain you please so long as it is not contrary to law. The words *ultra vires* have no application to one of these rules. We have a right to make any bargain we please, unless it is an illegal bargain. Rules *ultra vires* would mean we make rules where we exceeded our authority. We make any rules we please.

Mr. Haddelsey: I said, as well as saying that it was *ultra vires*, that it had the effect of annulling the statute.

Mr. Cobbett: In this case we make our own bargain, we are under no statute. The Friendly Societies Act insists we should have certain provisions under our rules, and those provisions we have, but it does not say we are not to make our own bargain in regard to pauper lunatic members. *Ultra vires* has no application to this case at all. It is in case of exceeding authority given to us. We make our own bargain; we make it as we please, so long as it is not contrary to law. My friend contends it is contrary to law. Unfortunately for him, my friend is in this mess, because if this bargain is an illegal bargain, neither the guardians nor anyone else can enforce it. That is the position. If this is an illegal bargain it is just like the bargain the trade union depended on. It is one sort of illegality instead of another. If it is an illegal bargain my friend's clients cannot enforce it, so that he may take his choice. He is on the horns of a dilemma. If his contention is accurate that it is illegal, he cannot enforce it. If, on the other hand, it is a legal bargain, his argument falls to the ground. I leave it to him to take his choice. The result in either way will please me. If we make a contract that annuls the Act of Parliament, it is obviously an illegal contract. You cannot say a little of it is illegal, and we will take the rest. It is either all or none. It is one whole contract, and you cannot go and break a bit off it, and enforce the rest. If that contract is tainted with illegality, it cannot be enforced by us, by a member

against us, or by the guardians against us. It places us in the same position, in the same difficulty, as occurred in the case of the trade union. That ends the observations I have to make on this case. I ask the justices to dismiss the summons on three grounds—first of all, it has already been determined by a competent authority of the society as final that this member was entitled to nothing when the guardians applied to the society to make payment to them. Secondly, upon the facts of the case, the member is entitled to nothing, and was entitled to nothing at that time. And thirdly, I submit that, *a fortiori*, he is entitled to nothing if my friend's argument is correct, that the rule annuls the Act of Parliament, if the rules constitute an illegal contract which my friend cannot enforce. On these grounds I ask that this summons may be dismissed.

Mr. Haddelsey: I think the society have tried to limit what is a pauper lunatic. The only case we could possibly get any benefit, would be where he happened not to be bad enough to go into an asylum; and if the legislature meant that, it would have said so when they passed this Act. They have not limited this. Only these rules have limited it in that way. No argument used was about the man Clayton. He was a member of their society a great number of years, and paid a great lot of money to them, and if he gets old and becomes insane, the society he has been paying to adds to his affliction by their saying, "You shall be a pauper." He had been paying for years to keep off the opprobrium of pauperism, and when he has got old they add to his affliction and say, "You are a pauper whether you will or not." The man is in receipt of parochial relief, and is a pauper. It is now declared to be on loan. But certainly he is a pauper lunatic.

Mr. Cobbett: It is immaterial on what grounds the summons is dismissed, so long as it is dismissed. It is no hardship to the man. We did not stop the money to send him there. We only stopped it after we found he was there. If he comes out again we shall pay him again. That is our bargain, and we stick to it.

The Rev. H. C. Brewster: Was the man in receipt of relief before he went to the asylum?

Mr. Haddelsey: He had been at the charge of the guardians for a long time before June, 1890, when the relief was declared to be on loan. He became chargeable on the 20th December, 1889.

The magistrates retired for a short time, and on their return,

The Rev. H. C. Brewster: We thank you for putting the matter plainly before us. The Bench refuse to make the order.

Mr. Cobbett: As my friend represents an opulent body, I think I may ask for costs.

The Rev. H. C. Brewster: I believe you both represent opulent bodies.

No order as to costs was made.

ON APPEAL.

The guardians, notwithstanding decisions against their claim by the lodge, the district, and the directors, applied to, and the magistrates granted, a case for the decision of the High Court of Justice. Accordingly the case came on for hearing in the Queen's Bench Division on the 30th November, 1891, before the Lord Chief Justice of England and Mr. Justice Mathew.

Mr. Gainsford Bruce, Q.C., and Mr. Sills, instructed by Messrs. Collyer, Bristow, and Co., agents for Messrs. Haddelsey and Son, appeared on behalf of the guardians, and Sir Charles Russell, Q.C., M.P., and Mr. Joseph Walton instructed by Messrs. Collis and Mallam, agents for Messrs. Cobbett, Wheeler, and Cobbett, solicitors, Manchester, appeared on behalf of the lodge, and also for the Manchester Unity of Oddfellows.

Mr. Gainsford Bruce: If your lordships please, this is a case stated by magistrates, and the short point is whether the Guardians of a Poor-law Union, who have incurred expense in the maintenance of a person who is a pauper and an inmate of a pauper lunatic asylum, and at the same time a member of a friendly society, can compel the friendly society to pay over to them money which would have become payable to the pauper had he not been an inmate of the asylum.

Mr. Justice Mathew: The magistrates thought what? What did they decide?

Mr. Gainsford Bruce: They decided, no; they refused the application. Application was made to the justices for an order, and the justices refused to make the order. I think I shall have to call your lordships' attention to the case. This is a case stated by the undersigned justices——

The Lord Chief Justice: Then the case is stated in paragraph 5.

Mr. Gainsford Bruce: Upon the hearing of the application the following facts were either proved before us or admitted by both parties: Thomas Clayton became a member of the Independent Order of Oddfellows Manchester Unity Friendly Society by admission into the Loyal Heart of Honesty Lodge No. 1,417, Louth District more than twenty years ago. He "declared on sick" with his lodge in May, 1889, *i.e.*, he then made a claim for sick pay upon the lodge. The lodge then commenced to pay him ten shillings per week as "sick pay," and continued to do so until the 23rd December, 1889, when it was stopped by a resolution of the lodge in consequence of his having become chargeable to the Caistor Union as a pauper lunatic on the 20th December, 1889. On the 28th June, 1890, the appellants passed a resolution declaring the relief to Thomas Clayton to be given "on loan," and sent notice thereof to the respondent on the 11th July, 1890, and all payments made by the appellants on behalf of the said Thomas Clayton from the date of the said resolution have been made on that footing. That is merely a formal matter. The Act of Parliament requires that that should be done before any application is made. The lodge disputed their liability to pay, and Thomas Clayton was on the 20th December, 1889, and has ever since continued to be, a pauper lunatic, and chargeable to the Caistor Union, and he had not then, nor has he since had, any relatives dependent on

him. The said society is a registered society, and the said district and lodge are registered branches of a registered society within the meaning of the Friendly Societies Act, 1875. All the steps directed by rule 33 of the lodge and general rules of the society, 75 (*a*) (7 and 8 to 13) to be taken for settling matters in dispute by arbitration, pursuant to section 22 of the Friendly Societies Act, 1875, were duly taken at the instance of the appellants, and an arbitration was duly held and a decision given adversely to the appellants' claim. Thereupon the appellants, in pursuance of district rule 45 and general rules of the society 75 (B1 to 11), appealed from the said decision to another body of arbitrators with the like result, and finally the appellants, pursuant to general rules of the society 75 (C1 to 13), appealed to the committee of management or governing body of the said society, who duly heard such appeal, and decided thereon adversely to the claim of the appellants on the 21st April, 1891. The printed copies of the general rules of the said society, district and lodge which accompany this case are to be taken as part thereof, and read and referred to accordingly. On the part of the appellants it was contended that although in pursuance of a resolution passed at a meeting of the board of guardians they had proceeded first against the respondent according to the rules of the society, that fact did not prejudice their case when they came before us under the provisions contained in the 23rd section of 39 & 40 Vic., c. 61, and the 1st section of 42 Vic., c. 12, that the effect of rule 63 of the said general rules was to annul, and had evidently been framed for the purpose of annulling, section 23 of 39 & 40 Vic., c. 61, that the said rule 63 attempted to narrow the effect of section 23 of 39 & 40 Vic., c. 61, to lunatic members of friendly societies who were not either in workhouses or lunatic asylums, whilst the Act spoke of "pauper lunatics" generally. That if the legislature, in passing the Act of 39 & 40 Vic., had intended only one special class of pauper lunatics (namely, those not in a workhouse or a lunatic asylum) to be benefited, such intention would have been expressed. That the Act under which the appellants applied was of more recent date than the Friendly Societies Act, 1875. On the part of the respondent it was contended that the appellants were persons claiming sick pay through Thomas Clayton, a member of a registered branch of a registered friendly society, and whether the member was (and the appellants through him were) entitled to sick pay from the branch, was a dispute within section 22 of the Friendly Societies Act, 1875, and must be decided in manner directed by the rules, and had been so decided, and such decision was binding and conclusive on the appellants and on us. Thomas Clayton, as a member of the said society, if entitled to receive any payment for sick pay from the branch, could only be so entitled under the contract between him and the society made by the rules, and according to the rules he had not since the 20th December, 1889, been so entitled. If, as contended by the appellants, the rules are in contravention of the statute of the 39 & 40 Vic., c. 61, s. 23, and therefore illegal, the contract made by them between Thomas Clayton and the society is void, and cannot be enforced against the society. We, however, being of opinion that Thomas Clayton was not on the 20th December, 1889, and had not since been entitled to receive any payment on account of such sick pay from the branch, and therefore that the appellants who claimed through him were not entitled to the order asked for, gave our determination against them as hereinbefore stated. Then the questions of law arising for the opinion of the court are :—(1) Were we bound by the decision of the committee of management of the said society, given under section 22 of the Friendly Societies

Act, 1875? (2) If not, was Thomas Clayton, being a member of the said society, as such entitled on or before the 20th December, 1889, to receive any payment for sick pay from the said branch of the said society? (3) Are the appellants entitled under the 23rd section of 39 & 40 Vic., c. 61, and notwithstanding rule 63 of the general rules of the said society, to the order applied for as hereinbefore stated?

Sir Charles Russell: Your lordships have copies of the rules.

Mr. Gainsford Bruce: I have to call your lordships' attention to the Act of Parliament and the rules. The Divided Parishes Act, 1876, 39 & 40 Vic., c. 61, s. 23, is the statute under which the application was made to the magistrates. The first portion of that section I think I need not read. That enables the trustees of a friendly society to pay the costs of the relief of a pauper out of an annuity payable to such pauper. The second portion is: "Where the guardians incur any expenses in the relief of a pauper lunatic, being a member of a benefit or friendly society, and as such entitled to receive any payment, they may recover from him, as a debt, or from his executors, administrators, or assigns in case of his death, the sum so expended by them as aforesaid, and the managing body of such society, after notice from the clerk to the guardians, served previously to the money being paid over, shall be required to pay the same to such guardians, and shall be exonerated on payment thereof from any further liability. Where any trustee, manager, or other person shall decline to make any payment, the guardians may apply to the justices in petty sessions assembled, and such justices may, if satisfied that it is right under all the circumstances to do so, make an order upon him to pay the requisite amounts then due to the guardians at once, and to pay from time to time in future as the liability in respect of the relief arises thereafter." Then there is a proviso at the end that is merely formal. Then, my lords, there is a subsequent statute, slightly altering the provisions of that Act. It was found that under that Act, where the pauper had a wife or other relative dependent upon him, the statute operated to prevent the wife or other relative getting any advantage from the benefit which the pauper might receive from the friendly society. That was considered by the legislature to be hard, and therefore the provisions were modified by the Act of 1879, 42 & 43 Vic., c. 12, s. 1. "The provisions contained in the 23rd section of the Divided Parishes and Poor-Law Amendment Act, 1876, shall not apply to any moneys which a pauper or pauper lunatic having a wife or other relative dependent upon him for maintenance may be entitled to receive as a member of any friendly or benefit society."

Sir Charles Russell: This is not important, for it is conceded that he had no wife or other relative.

Mr. Gainsford Bruce: This is only important as showing that the second Act was passed in order to entitle the wife or other relative, in cases where there was a wife or other relative—"but such moneys shall, subject to any deductions for keeping up his membership required by the rules of such society or any branch thereof from which such pauper or pauper lunatic is entitled to receive such moneys, be paid or applied by the trustees, committee, or other officers of such society or branch, to or for the maintenance of such wife or relative." Now, my lords, I come to the rules of the society. No doubt the rules of the society do, so far as it is possible—and it is for your lordships to say how far it is

possible—take care that although, no matter how far a member of the society might be entitled to the benefit so long as he is himself a member, yet the moment the Poor-Law Guardians become entitled to the benefit the pauper ceases to be entitled to any benefit from the society.

Mr. Justice Mathew: In other words, the other members of the society decline to take upon themselves a burden cast upon the community.

Mr. Gainsford Bruce; So long as the benefit goes to the pauper he is to have it, but the moment it goes to his creditors then it is to stop. It is remarkably like those provisions your lordships are familiar with in settlements, where a man is to have the whole benefit of the money that is settled upon himself, but the moment it goes to his creditors then all benefit is to stop. I do not know whether your lordships have copies of the printed rules—the General Rules—the rules of the Independent Order of Oddfellows.

The Lord Chief Justice: Yes.

Mr. Gainsford Bruce: The first rule that I shall call your lordships' attention to is rule 38, at page 43 of the book. The rule relates to the rate of contribution and benefits. It is a long rule, and I need not read the whole of it to your lordships. It states upon what basis the contribution is to be made, and what benefit the person making the contribution is to have. I begin at the last paragraph on page 44: "Such contributions, and all interest which may arise from the investment of the whole or any portion thereof, shall be appropriated respectively to the payment of the sick and burial of the dead, and paying the contributions of members in a workhouse or lunatic asylum at the charge of any parochial board, having no wife, children, or other relative dependent on them, except in cases of appropriation of surplus allowed by the board of directors; also, that each district shall fix the amount to be paid by each lodge during sickness for such payment, and the amount of funeral allowance." Then, my lords, rule 39 is the next to which I desire to call attention. That is on page 65—

Sir Charles Russell: I do not think this is important.

Mr. Gainsford Bruce: No; it is only for this—rule 39 provides for certain cases where the benefit shall cease. The former rule gives him certain benefits. Then this is a rule which says where the benefits shall cease—where he has committed certain offences. Then there are provisions for fines and so forth. There is no provision for the benefit ceasing if he becomes a pauper.

Sir Charles Russell: It is dealing with breaches with regard to payment of penalties and contributions.

Mr. Gainsford Bruce: Exactly. Now, my lords, I think rule 63 is the one upon which the magistrates acted. That is at page 83: "If a member is in a workhouse or lunatic asylum, at the charge of any parochial board, no sick pay shall be allowed unless he has a wife or children, or some other relative, dependent upon him for support, when the amount due shall be paid for their relief and maintenance; in all such cases the member shall be kept good upon the books from the Sick and

Funeral Fund of the lodge." On the construction of that rule it seems to me the whole question turns. The Act of Parliament says that whatever the member of a friendly society is entitled to, the guardians may claim, or the magistrates may make an order declaring that what he is entitled to shall be paid for the money expended by the guardians for his maintenance.

Mr. Justice Mathew: That is when a member of the society, as such, is entitled to the particular payments.

Mr. Gainsford Bruce: Yes.

Mr. Justice Mathew: It is said here that under these rules he is not entitled.

Mr. Gainsford Bruce: Of course it is just like those questions where a settlement is made that he is to be entitled to the interest on money.

Mr. Justice Mathew: Why should they not make that bargain, because it is a fair one?

Mr. Gainsford Bruce: Generally speaking, those settlements are set aside.

Mr. Justice Mathew: We are talking of contracts now. Why should not a man enter a friendly society upon those terms?

Mr. Gainsford Bruce: He has here entered into a contract, the effect of which is to nullify the provisions of an Act of Parliament.

Mr. Justice Mathew: No, because the Act of Parliament says "as such," and the rules correspond exactly. There is no illegality in it.

Mr. Gainsford Bruce: Is it competent for a society to say this? He does not cease to be a member of the society. But is it competent for the society to say "We will pay over to you so long as you yourself are entitled to the money, but so soon as your creditors become entitled to it (they are the guardians of the poor) it shall stop." It is an evasion of the Act.

The Lord Chief Justice: Is it not for the societies to say what shall be the terms upon which their members, as such, shall receive benefits.

Mr. Gainsford Bruce: No doubt. I should say, yes: certainly.

The Lord Chief Justice: They do say so.

Mr. Gainsford Bruce: They do say so, but it is obviously not for the purpose of affecting the benefit of the member, but for the purpose of depriving the guardians of sums of money which they would be otherwise entitled to.

The Lord Chief Justice: It is as my learned brother put very well just now. They contract with their members: "Till you become a public burden we will pay you, but when you become a public burden we will not pay you."

Mr. Gainsford Bruce: As long as he is entitled to it himself they go on paying, but the moment his creditors become entitled to it it shall cease.

Sir Charles Russell: They are not entitled to it.

The Lord Chief Justice: Why should the benefit societies relieve the public?

Mr. Gainsford Bruce: Because the payments are made upon this basis: that the person shall be entitled to certain benefits.

The Lord Chief Justice: Why?

Mr. Gainsford Bruce: A portion of the contributions——

Mr. Justice Mathew: That is taken into account in the bargain that is made. The contributions may be less, because in certain events certain members will cease to have any claim.

Mr. Gainsford Bruce: I do not think it is so in this case, because the particular rule seems to have been made in order to repeal the Act.

The Lord Chief Justice: No, not at all. It limits the benefit to the state of things under which the man himself can receive it, or his wife or other relative.

Mr. Gainsford Bruce: Originally the contributions were based upon this assumption——

The Lord Chief Justice: I cannot think there is anything illegal in the bargain, and if there is nothing illegal it stands.

Mr. Gainsford Bruce: It is only illegal to this extent. It is a rule made just at the time the Act of Parliament is passing, for the purpose of nullifying the Act of Parliament.

The Lord Chief Justice: You must not get away from your admission that it is for the lodges to settle upon what terms their members shall receive what benefits.

Mr. Gainsford Bruce: Certainly; and if this was for the benefit of the man, then, no doubt, your lordships would hold the rule to be good; but it is so obviously for the purpose of preventing the guardians getting this sum of money. It is not for the benefit of the member in any way. It is simply to prevent the creditors from getting it. The payments are based upon the theory that the members shall receive certain benefits. Payments are made upon that basis, and then an Act of Parliament is passed saying that in certain cases the benefit to which the member is entitled shall be paid over to the guardians, thereupon a new rule is made that it shall not be paid over to the guardians.

Mr. Justice Mathew: There is the right of contract in the society and its members.

The Lord Chief Justice: As such.

Mr. Gainsford Bruce: A rule of this sort entirely prevents this Act of Parliament from being any use.

The Lord Chief Justice: What it says is—when a person is entitled he is to have the money; if he is not entitled he is not to have the money. Here he is not entitled.

Mr. Gainsford Bruce: Well, if your lordships hold that that is the construction I cannot say anything more. I have put the point before your lordships. I submit that the effect of such a rule is to do away entirely with the Act of Parliament.

The Lord Chief Justice: I do not think so.

Mr. Gainsford Bruce: In no case where the society has such a rule can the guardians get the benefit.

The Lord Chief Justice: It prevents the society from being saddled with a portion of the public duty or the public obligation, that is all.

Mr. Gainsford Bruce: If your lordship holds that, I have nothing more to say.

JUDGMENT.

The Lord Chief Justice: I do not think we need trouble Sir Charles Russell. It appears to me that the magistrates in this case decided perfectly rightly. This is a member of a lodge who is in a lunatic asylum, and who has no wife or children or other relative dependent upon him for support, and he is a pauper lunatic. That is found in the case. He comes directly under the 63rd rule of this society—the Independent Order of Oddfellows, which states that: "If a member is in a workhouse or lunatic asylum at the charge of any parochial board, no sick pay shall be allowed unless he has a wife or children, or some other relative dependent upon him for support, when the amount due shall be paid for their relief and maintenance: in all such cases the member shall be kept good upon the books from the sick and funeral fund of the lodge." That is to say, they keep him. They do not defraud him personally of the benefit that he has entered into a contract to receive, but they say that when he becomes chargeable to the public, or any portion of the public, they will not take that portion of the public obligation upon themselves. That contract is plainly, but for any Act of Parliament impeaching it, and making it invalid, a valid contract. I should say it is a very sensible and reasonable contract, too; but at all events it is a perfectly valid one. Then it is said that, nevertheless, the 23rd section of the Act of 39 & 40 Vic., c. 61, in effect makes it illegal, and that the order for his sick pay may be made in spite of that rule, the section of the Act of Parliament being this: "Where the guardians incur any expenses in the relief of a pauper lunatic, being a member of a benefit or friendly society, and as such entitled to receive any payment, they may recover from him as a debt, or from his executors, administrators, or assigns in case of his death, the sum so expended by them as aforesaid, and the managing body of such society, after notice from the clerk to the guardians, served previously to the money being paid over, shall be required to pay the same to such guardians, and shall be exonerated on payment thereof from any further liability." That is the section which it is said invalidates contracts made under the 63rd rule. I do not see that it does, because it says that in the cases of members of a lodge being entitled as members of a lodge to certain sums, the guardians shall, following the provisions of the Act of Parliament, be entitled to get those sums for the benefit of the members of the lodge. But the answer to it is this: "The words

"as such" put an end to the case, because he is not entitled as such to the sums of money that is sought to be recovered. On the contrary, the 63rd rule expressly disentitles him under the circumstances found in the case to receive that sum of money which it is said ought to be paid. The words of the Act of Parliament and the words of the rule are perfectly consistent, and under the words of the Act of Parliament and the words of the rule it appears to me that the magistrates have decided perfectly rightly, and this appeal must be dismissed with costs.

Mr. Justice Mathew: I am of the same opinion.

HIGH COURT OF JUSTICE.
QUEEN'S BENCH DIVISION.
DIVISIONAL COURT.
Before
CAVE, J.
AND
CHARLES, J.
1891.
Friday,
June 12.

CASE 187.

BUSHELL *v.* SMITH.

Claim for funeral money—Dispute—Jurisdiction—38 & 39 Vic., cap. 60, sec. 22.

This was a claim by a member of a friendly society before a magistrate against the secretary. One Harriet Bushell was the mother of a member of the Comical Fellows Friendly Society, who had nominated her to receive any moneys that might be due to him or his representative on his death. The secretary set up the provision in the Friendly Societies Act, 1875 (under which the society was duly registered), 38 & 39 Vic., c. 60, s. 22: "Every dispute shall be decided in the manner directed by the rules of the society, and the decision so given shall be binding and conclusive on all parties without appeal." Then rule 26 of the society provided that where a dispute arose between a member and any officer it should be decided by a committee. But the Act was not to apply if the society did not collect outside a limit of 10 miles. It was contended on the part of the secretary that the magistrate had no jurisdiction to make an order, but he thought that under 42 Vic., c. 9, re-enacted by 50 & 51 Vic., c. 56, s. 30, he had jurisdiction, and made an order accordingly for payment, against which the secretary appealed, the section providing "that it should only apply to societies which receive contributions by means of collectors at a greater distance than 10 miles from the registered office or principal place of business." The case had come last sittings before a divisional court constituted of Mr. Baron Pollock and Mr. Justice Charles, and it was sent back to the magistrate to find whether the society "collected" outside a limit of 10 miles, and he found that it had not, so that the arbitration clause would be applicable.

Mr. Warburton appeared for the secretary, and submitted that there was no jurisdiction, and that the magistrate was wrong in making the order.

The counsel for the claimant endeavoured to contest this, but

The court said it was clear that the magistrate had no jurisdiction, as the arbitration clause applied.

Appeal allowed.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 188.

COURT OF COMMON PLEAS. 1825. *Friday, May* 13.

PIKE *v.* CARTER.

No action lay against a magistrate for enforcing a previous order of a magistrate which had been made without jurisdiction, it appearing on the face of the order that there had been no defence, and that the magistrate's jurisdiction had not been questioned at the time.

Trespass does not lie against a magistrate for anything done by him in the discharge of his duty, unless he be made acquainted with every fact necessary to enable him to determine, when called on to act. Where, therefore, the treasurer of a benefit society brought such action against a magistrate for issuing a warrant of distress against him, upon a previous order of two magistrates, for the relief of a member, in pursuance of the Statute 33 Geo. III. c. 54, s. 15.

Held that the action could not be maintained, it appearing on the face of the order that the treasurer made no defence, the defendant's jurisdiction not having been questioned at the time, and the treasurer having neglected to present to his notice a rule of the society, which directed all disputes between its members to be referred to arbitration, and which rule was confirmed by section 16 of the statute, whereby the award was made conclusive, without being subject to the control of the magistrates.

CASE 189.

WELLINGBOROUGH COUNTY COURT. 1877. *April* 10.

COPSON *v.* ARMSBY.

Friendly society—Medical attendance—Claim for expenses of by member—Action premature—Claimant nonsuited.

At the Wellingborough County Court, on April 10th, 1877, before W. H. Cooke, Esq., Q.C., judge, an important case was heard. The plaintiff was Thomas Copson, member of the Whitworth Lodge, and the defendant, William Armsby, was the secretary of the lodge. Plaintiff, who sued for 8s. 2d. for medical attendance, was refused pay on the ground that he was no longer a member, having been excluded at a meeting of the lodge on January 22nd. The case was brought before the Northampton County Court a month or two previous, Copson seeking to compel the lodge to reinstate him in his membership. The proceedings were then cut short by the judge deciding he had no jurisdiction; the Wellingborough County Court being the proper court to sue in.

The action now took another form. Plaintiff had suffered from an attack of bronchitis, and had taken the necessary steps to secure medical attendance at the expense of his lodge. The bill amounted to 8s. 2d., but this the lodge refused to pay, and he now sued the lodge to recover the amount. Mr. Sims Reeve, of the Norfolk Circuit (instructed by Mr. Coaks, of Norwich), was for the plaintiff; Mr. A. Hensman, of the Midland Circuit, for the defendant. Mr. S. Daynes, of Norwich, one of the members of the board of directors, was also present, the case having been deemed of sufficient importance to be taken up by the chief executive of the Order.—Mr. Reeve said Copson sued the secretary of the Whitworth Lodge, Earls Barton, in the Northampton District, one of the lodges in the Manchester Unity. By the 14th section of the rules of the Whitworth Lodge it was provided that "if any dispute shall arise between a member or person claiming through or under a member, or under the rules, any officer of this lodge, or committee thereof, it shall be referred to arbitration, and if the amount in dispute does not exceed 21s., the arbitrators shall be chosen in accordance with the 74th general rule of the said Order; but if the amount in dispute exceed 21s., or if a member has subjected himself to expulsion or suspension from benefits, such dispute shall be referred to the arbitration of a summoned lodge, under the 75th general rule of the said Order. The decision made by such committee shall be binding and conclusive to all parties, unless appealed against to the arbitration of a district meeting within three months after the date the decision was made. The decision of the district meeting may, at any time within three months from the date it was made, be referred to the arbitration of the directors of the Order by either of the disputing parties giving notice to the Corresponding Secretary of the Order; and the decision of the directors shall be final and conclusive on all parties." In this case Thomas Copson had been a member for a considerable number of years, but 31 years since he left the Hand and Heart Lodge, Spratton, of which he had been a member, and joined the lodge at Earls Barton, to the funds of which he had for 31 years subscribed. During that time he had filled the office of auditor, and it was his bounden duty to see that the accounts were kept *en regle*. Having filled the office of N.G., and every other office in his lodge, he was thoroughly acquainted with the duties of the different offices. As auditor it was his unhappy duty to find fault with the way in which several of the accounts were kept, and he made complaints in open lodge. According to the Manchester Unity, if a quarter of the lodge were dissatisfied with the way in which the accounts were audited, they might go to the Registrar of Friendly Societies and ask for an inquiry. This was done, and Mr. Ludlow sent down Mr. H. R. Jennings, the inspector, to investigate and report. In substance Mr. Jennings reported that for some of the statements of the complainant there was no foundation, but that in some instances the funds of the lodge were not properly dealt with. One could readily understand that where ill-feeling had previously existed, it would not be allayed by that report. Upon this the lodge took very strong action and turned Mr. Copson out. When they expelled him, by virtue of the 14th clause of their own rules, he could appeal to the Northampton District Lodge. He had gone to that power of appeal, and had been reinstated. In April of last year he was expelled—that was before the investigation—and on appeal he was reinstated. The Earls Barton Lodge had accepted the decision of the board of arbitration before, and they were bound to accept the decision again. Copson was reinstated at the end of May, 1876, and from that time to January 8th, 1877, the lodge

continued to receive his subscriptions. On January 13th of this year the inspector came down. To show that Copson was not singular in the view he took, it was necessary for him to get one-fourth of the members of the lodge to sign an application to the Registrar (Mr. Ludlow) before he would send down the proper officer. Immediately that was done, Copson, who had been a member for 31 years, and whom it would be very convenient for the younger members to shelve, as the older a man was the nearer was he to death, and the more likely was he to need the pecuniary help of the lodge, was turned out. A member got up in the lodge and proposed that Copson be then and there expelled, without giving him the slightest intimation of what they intended to do. Copson was naturally astounded, and said, "You can't dismiss me ; let me be heard." They, however, said no ; he had so misconducted himself that they would not even hear him ; and they positively, then and there, without giving the man the slightest intimation of their intention to expel him, passed a resolution of expulsion. He told them they had no right to do this, and that they could not turn a man out without notice. He appealed to the board of arbitration at Northampton, and notice was given by the secretary of the district, who had the notice returned to him by carrier, without any answer. At the day fixed Copson appeared before the board of arbitration, but the lodge did not. The matter was gone into, and the board again reinstated Copson, as they had perfect power to do under the 14th section, as a member of his lodge. A formal notice of the decision was sent to the N.G. of the lodge, and in reply Mr. Sheffield received a note from the secretary informing him that, by a resolution passed on August 31st, 1876, it was resolved "that we do not recognise the summons meeting of September, 1876, nor any future document that comes from the Northampton District." Now it was perfectly clear under the 6th section of the Act of 1875 that this lodge, being once registered, could not sever itself from the Order, except by a majority of three-fourths in number, and then the new rules must be sent to Mr. Ludlow, whose duty it was to see there was nothing in them inconsistent with the laws of the land. Until that was done the old rules were in force. On February 13th, Mr. Copson became ill, sent in his claim for assistance, when the relief was refused.—Thomas Copson, the plaintiff, said he had been a member for 35 years. He continued to pay his contributions until January of this year, when there was an inquiry at the instance of himself and a quarter of the members of the lodge, directed by the Registrar of Friendly Societies, before Mr. Jennings. At the lodge meeting held on January 22nd, Mr. Walker proposed that he should be expelled. Up to that moment no one had made a charge against him. He said they could not expel him without bringing a charge against him in writing, or without due notice. No one had given him notice, either by word of mouth or by writing. Somebody seconded the proposition, and he requested to be heard, but the chairman would not allow him to say a word. They then proceeded to vote by ballot. The chairman told him that the result was that he was expelled. Upon that he appealed to the district arbitrators the next day. He went to the next meeting of the lodge, but they refused to let him in. In pursuance of his notice of appeal, January 29th was fixed for hearing the appeal, and he attended a meeting of the arbitrators held at Northampton. He stated his case, and the result was that he was reinstated. In the early part of February he was taken ill, but they had refused to pay him 8s. 2d.—Mr. Hensman : They had a right to turn him out if they thought fit.—The judge : But they must take the necessary legal steps. Such arbitrary proceedings are

not allowed in a court of law, much less in a friendly society. He, as an honest man, did not like their dishonesty, and got an inspector down, and these dishonest men, not liking it, turned him out.—Mr. Hensman said he did not wish to go into details, and submitted that his Honour had no jurisdiction.—The judge said Mr. Hensman must either object to the jurisdiction or go into the question of whether the plaintiff was lawfully expelled.—Mr. John Sheffield, of the Northampton District, said the Whitworth Lodge still belonged, in his opinion, to that district. He was receiving subscriptions from one of the members of the lodge through a lodge in Northampton. The Earls Barton Lodge had subscribed to the Burial Fund, but had ceased to do so about twelve months.—In answer to the judge, Mr. Reeve said he submitted that this case should be decided under the old law. There was nothing in the new Act to take it from that. The Earls Barton Lodge was registered under the old law, and remained so until they took steps to come under the new Act.—The judge remarked that if the Earls Barton Lodge was still subject to the Northampton District, there had been a decision of the district arbitrators, and plaintiff might come to him to enforce that decision, which consisted of one delegate from each of the lodges of the district, only one of the rules provided that none of the arbitrators must come from the lodge whose decision was appealed against.—This concluded the case for the plaintiff.—Mr. Hensman submitted that the court had no jurisdiction. The legislature had provided that domestic tribunals should decide these friendly societies' disputes. This was no dispute as to whether the plaintiff should be reinstated, but whether the lodge owed him money or not.—The judge: The way I read it is this, that every dispute between a member, such as Copson, and the society of which he has for very many years been a member, must be decided by the rules of the society and by section 22 of the Act. · The society can only come here and ask the court to give effect to the conclusion to which they have arrived. The question is whether going to Northampton was in itself sufficient, or was going somewhere else necessary. You come, in the first instance, to the domestic tribunal at Northampton, which is close at hand, but if either party dislikes that judgment then you have the appeal to the highest tribunal, at Manchester. But you have not made that appeal.—Mr. Hensman: No; we have three months to do it in.—The judge: But the man is not to starve, die, and be buried in the meantime. Notice of appeal must be given within a reasonable time after the decision, otherwise the case was in suspense.—Mr. Hensman submitted that if notice were given any time within the three months that would be a sufficient compliance with the rule. Until that time had elapsed it was impossible for them to say there had been any decision, or that the matter was final and conclusive.—His Honour said the only question was whether the notice of appeal should be given forthwith, or whether the matter could lie by for three months before the lodge gave that notice.—Mr. Hensman, continuing the contention that notice any time within the three months would be sufficient, his Honour said gross injustice would be done if he ruled any other way than that the appeal should be given within a reasonable time of the decision.—The judge said Mr. Hensman wanted him to say that it was right to let a notice of action go for three months. Only let him think of the wickedness, the tyranny, and the mischief he was contending for. The objecting parties must give notice within a reasonable time, although the grounds of appeal might be stated at any time within three months.—The only difficulty he had now was this, whether—having made them acquainted with his opinion that notice of appeal ought to be given, the

County Court had jurisdiction under section 22 until the three months had expired.—Mr. Reeve said he was prepared, if they had any intention of appealing, to consent to an adjournment for an appeal.—The judge said that was a very fair test. This was a friendly society dealing with the question of trying to keep a man out of his money. Let the secretary be put in the box to swear that they intended to appeal.—Mr. Hensman said that was not the question before the court.—The judge thought that plaintiff must be reinstated by course of law before he could bring an action for sick pay. Then he must come to the County Court for enforcement of the order of the court of appeal.—Mr. Reeve remarking that he saw no way of compelling the lodge to obey rules, his Honour said he should have the secretary and other people of the lodge there, and he would send them to prison till they complied with the order. If he once, as judge of that County Court, ordered the enforcement, according to section 22 of the Act, if any secretary, or N.G., whatever fine name he had, would not obey it he would send him to prison till he did. They were not to have a lodge setting the law at defiance. —Mr. Reeve said everybody was bound to obey the rules of the Order.— His Honour pointed out that under section 22 the court could only enforce the order of the Arbitration Court at Northampton, reinstating the plaintiff.—Mr. Reeve said it could only come to this—if they were not prepared to appeal and carry out the order, the plaintiff would have to come and enforce the award of the arbitrators.—His Honour said it appeared to him he had no power under this statute to order the defendants to pay sick pay. All he could do, when the proper time arrived, was to enforce any order made by a competent tribunal, and that, under the rules of the society, was competent to make a decision. —Mr. Hensman, as he understood this to be a verdict for defendant, applied for costs.—His Honour said it appeared to him the lodge was in default. The applicant had come there under a mistake. The statute only enabled him to enforce the decision of the arbitrators. He should nonsuit the plaintiff on the ground of his having brought the action prematurely. He should give no costs at all. The defendants had had a judgment, and if they were right they could go to Manchester.

CASE 190.

BRIDGNORTH COUNTY COURT.
1878. *Sept.* 19.

NETHERWAY *v.* RAVEN LODGE, M.U.I.O.O.F.

Friendly Society—Medical attendance—Claim for expenses of by Member—Dispute—Rules—Jurisdiction—Claim failed.

This court was held on Thursday, the 19th September, 1878, before the judge, J. W. Smith, Esq., Q.C.

John Netherway, painter, Whitburn Street, sued Enoch Sergeant, secretary to the Oddfellows' Lodge, Manchester Unity, held at the Raven Inn, for the sum of £3 12s., which he had paid for medical attendance during the years 1872, 1873, and 1874, to the late Dr. Roe and Messrs. Mathias and Bethell.—Plaintiff contended that as he had been paying contributions into the lodge during those years, the expenses should be borne by the society.—Mr. R. F. Hazlewood (who appeared for the defendants) raised legal objections, inasmuch as by the

rules of the society all disputes should be referred to the arbitration of a meeting of the lodge, which meeting had been duly called, and notice thereof given to the plaintiff, who did not attend. The meeting was held and a decision arrived at, which was properly entered on the minute-book, and a copy sent to the plaintiff. The plaintiff ought to have placed his name on the list of the surgeon of the lodge, who, after examination, would have attended him, but this plaintiff did not do. Mr. Hazlewood quoted rules 80 to 83 of the lodge, which provides that if any member be aggrieved at the resolution of the lodge, he may appeal by giving notice to the secretary within three months, and cited 21 & 22 Vic., c. 101, s. 6, in support of his argument. He also called Mr. Sergeant, who proved that plaintiff had not taken the proper steps to place himself upon the books of the surgeon to the lodge, and therefore secure his attendance upon him in sickness; and that the meeting of the lodge had been properly held, notice thereof given to the plaintiff, and a decision arrived at.—His Honour said that he agreed with Mr. Hazlewood that the legislature had provided for the decision of cases of this nature without having these proceedings in courts of law. The plaintiff's course was clear. He should have taken care to have complied with the rules of the lodge, at which the question would have been discussed and decided, and that meeting, it appeared from the rules, was competent to decide such a dispute. The plaintiff had failed in establishing his claim, and the court had therefore no jurisdiction. Verdict for defendant.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 191.

NORTHALLERTON COUNTY COURT.
1879.
March 15.

STROUGHAIR *v.* VASEY.

Friendly Society—Medical Attendance—Action to recover expenses of by Member—Dispute—Rules—Jurisdiction—Claim allowed.

At the Northallerton County Court, on Saturday, the 15th March, 1879, before Mr. E. R. Turner, judge—Mr. Henry Stroughair, jun., sued Mr. Stephen Vasey, treasurer of the Northallerton Providential Lodge of Oddfellows, Manchester Unity, for the sum of £4 11s., money paid for the services of a medical man not provided by the lodge. Mr. West, solicitor, of Thirsk, appeared for the plaintiff, and Mr. Fawcett, solicitor, of Yarm, for the defendant. Objection was taken on the part of the lodge to his Honour's jurisdiction to hear the case, and the C.S. of the Order was present, pursuant to a subpœna, to produce the registered general rules, etc., but the judge said that after the decision of the Court of Queen's Bench in the case of Holt *v.* The United Patriots' Benefit Society, he considered he had jurisdiction, and the trial was then proceeded with.—The plaintiff became a member of the lodge some years ago. In June of 1876 he was at Sunderland, and had to return home on the 4th of that month on account of illness. Dr. Richmond, the lodge surgeon, attended him until the 11th of the same month. During the night of the 11th he was taken worse, and his relatives considered that he was dying. Plaintiff's father went early on the

morning of the 12th for Dr. Richmond to come and attend his son. Dr. Richmond, who had been out all night, was not up. A message was sent to him, to which he replied that he would not give plaintiff any more medicine until he saw him, which would be shortly. The plaintiff's father returned home, and, as his son appeared to get worse and the doctor did not attend, he again went for him, and saw his servant. He told her to go and inform Dr. Richmond that plaintiff was dangerously ill, and he must come at once. The plaintiff's father received the same answer as he got before. He sent word up to the doctor that if he could not come at once he would be forced to get some other medical man, as his son was only just alive. Dr. Richmond replied that he would not attend his son; he might get who he liked. He then went to Mr. Brown's and told him in what state his son was, and he at once accompanied him home, and attended on his son until his recovery. The present action was brought to recover £4 1s., the amount of Mr. Brown's account, and 10s., money which the plaintiff had paid as expenses of a summoned meeting of the members of the lodge to inquire into the conduct of their surgeon.—Mr. Henry Brown, surgeon, stated that when he saw the plaintiff he was suffering from a most severe attack of meningitis, and if he had not had immediate attention the consequences might have been serious.—His Honour remarked that the lodge employed a medical man to attend to their members, and entered into a contract with those members to supply them with medicine and medical attendance during their membership. By not doing so they broke their contract, and were actionable. He looked upon Dr. Richmond as an agent of the lodge, and if he did not fulfil his duties the lodge was accountable for his actions as their agent. He gave a verdict for the plaintiff for £4 1s. The 10s. paid for the summoned lodge was paid according to the rules of the lodge, and could not be recovered.

* In consequence of the above decision, the Act 42 Vic. c. 9 was passed in May, 1879.

CASE 192.

COURT OF COMMON PLEAS. 1829. *May* 19. GARNER *v.* SHELLEY.

Friendly society—Medical attendant—Claim for Fees.

By the rules of a friendly society a medical attendant was entitled to 3s. per annum from every member, and a committee of the society were authorised to settle all disputes, grievances, etc., relative to the affairs of the society, subject to an appeal to two magistrates.

The plaintiff, who had been duly appointed medical attendant, was dismissed by the committee without any meeting of the members of the society at large, and another appointed. Upon an application to magistrates they recommended a public meeting, which being convened accordingly a large majority of members voted for the plaintiff, who thereupon sued the defendant, the treasurer, for the 3s. received to the use of the medical attendant.

Held that the plaintiff was entitled to recover, and that the defendant was not exonerated by an order of the committee not to pay.

CASE 193.

GARSTANG COUNTY COURT. 1889. *Oct.* 23. *Before* M. COVENTRY, ESQ.

WALMSLEY *v.* LOYAL WEST COAST LODGE, M.U.I.O.O.F.

Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap.* 60), *sec.* 22 — *Dispute — Claim for Sick Pay — Medical Certificate Informal—Verdict for Defendant Society.*

In this case James Walmsley, Pilling, sued the Loyal West Coast Lodge (Pilling District) of the Independent Order of Oddfellows, M.U., for £4 8s., amount of sick pay. Plaintiff was represented by Mr. Hartley, solicitor, of Lancaster, and Mr. Bimson, secretary of the defendant society, appeared to answer the claim. Mr. Hartley stated that the plaintiff had been a member of the society for something like 30 years. He had a certificate from Dr. Harrison, showing that during the period over which the claim extended plaintiff was ill. The defendants did not deny the fact of sickness, but objected to the form of certificate. They also alleged that the court had no jurisdiction, inasmuch as the plaintiff had not gone about the matter in the usual way. Mr. Bimson objected to the jurisdiction of the court, seeing that rules were laid down for the settlement of all disputes by the lodge itself, and the plaintiff had bound himself to abide by those rules. His Honour said he must hear the case before he could decide as to whether he had any jurisdiction. The rules specified that a certificate should be produced from the medical officer of the lodge (Dr. Day), and given to the nearest sick visitor within the space of four days. The plaintiff had not complied with this regulation, not having either obtained a certificate from Dr. Day, or sent one in within the prescribed four days. Instead, he had waited for some time, and then obtained a certificate from Dr. Harrison, of Garstang. This he had forwarded to the lodge, which had thereupon decided that a certificate should be got from Dr. Day, or that Dr. Day should countersign the one given by Dr. Harrison. Plaintiff had done nothing, and this was the cause of the present action. A verdict was given in favour of the society with costs, the judge remarking that the plaintiff had had every chance of getting a properly signed certificate.

CASE 194.

CHITTY, J. 1889. *Nov.* 8.

ALEXANDER *v.* SIMPSON.

COURT OF APPEAL. *Nov.* 27.

Company—Special resolutions—Notice of Meeting.

The articles of association of a company provided that "seven days' notice in writing specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members before every general meeting." Notice was given that an extraordinary general meeting would be held on the 12th July at the hour and place therein mentioned for the purpose of considering, and if deemed advisable of passing the resolutions set forth in

the notice, and it concluded, "should such resolutions be duly passed the same will be submitted for confirmation as special resolutions to a subsequent extraordinary general meeting which will be held on Monday, the 29th July, at the same time and place."

Held, by the Court of Appeal (affirming the decision of Chitty, J.) that the said meeting was invalid, for that though it was possible to put on the notice the construction that a meeting would be held on the 29th July, whether the resolutions were passed on the 12th or not, the construction which an ordinary business man would put upon the notice would be that the meeting would be held only if the resolutions were passed at the first meeting; that the notice of the second meeting was therefore conditional, and, being bad when sent, could not be made good by the shareholders acquiring information *aliunde* that the resolutions had been passed at the first meeting.

CASE 195.

V. C. BACON. 1885. *Dec.* 11.

IN RE MILLERS DALE AND ASHWOOD DALE LIME COMPANY.

Limited company—Winding up—Special resolution—Increase of capital—General meetings—Interval of "not less than fourteen days"—Invalidity of resolution—Rights of creditors—Contributories—Companies Act, 1862, *sec.* 51 [*Revised Ed. Statutes, Vol.* XIV., *p.* 214].

Under section 51 of the Companies Act, 1862, there must be an interval of not less than fourteen clear days between the meeting at which a special resolution—as for instance for an increase of capital—is passed and the meeting confirming the resolution. If the interval is less than fourteen clear days the statutory defect in the resolution only affects the position of the company and its shareholders *inter se*, and does not concern the creditors.

Thus, where a director of a company took shares in new capital raised under a resolution passed and confirmed at meetings the interval between which was thirteen days only, and the company afterwards went into liquidation, he was held to be precluded from objecting to the validity of the resolution as a ground for his removal from the list of contributories.

CASE 196.

CHITTY, J. 1885. *April* 1, 16.

IN RE RAILWAY SLEEPERS SUPPLY COMPANY.

Time—Computation of—Interval—Company—Special resolution—Companies Act, 1862 (25 & 26 *Vic.*, *cap.* 89), *sec.* 51 [*Revised Ed. Statutes, Vol.* XIV., *p.* 214].

The interval of not less than fourteen days which, under section 51 of the Companies Act, 1862, is to elapse between the meetings passing and

confirming a special resolution of a company is an interval of fourteen clear days, exclusive of the respective days of meeting, and therefore a special resolution for reduction of capital passed at a meeting held on the 25th of February, 1885, and confirmed at a meeting held on 11th March, 1885, was held to be bad.

TYNEMOUTH COUNTY PETTY SESSIONS.
1876.
April 26.
Before
M. H. BELL, ESQ.
L. W. ADAMSON, ESQ.
AND
MAJOR MCKENZIE.

CASE 197.

THE QUEEN *v.* TINN.

Friendly society—Secretary withholding moneys belonging to—Misappropriation—Conviction.

Joseph Tinn, of Wallsend, was charged on remand under the Friendly Societies Act, 1875, with being the secretary of the Oddfellows' Pride Lodge Friendly Society, and having in his possession the sum of £21, and did withhold or misapply the same at Wallsend on the 26th December, 1874. He was further charged with further withholding £6 15s. 4d., at Wallsend, between 7th November, 1874, and 11th August, 1875. Mr. Drummond appeared for the prosecution, and Mr. Clarke for the defence. Mr. Drummond said the proceedings had been instituted by the trustees of the society, not from any malicious motives, but to show people who held situations of trust that they could not do what they pleased with money entrusted to their care. The defendant pleaded guilty, and Mr. Clarke admitted the misappropriation. William Bowman, Corresponding Secretary of the Newcastle District, said the defendant was in the habit of coming to him for money for funeral expenses, and on the 26th December he received £26 odd, one sum of which was for £21, for which he gave a receipt. Cross-examined: The defendant had always borne a good character. John Marshall, Rose Hill, a trustee of the society, appointed in 1866, had been authorised to take the proceedings. He looked at the book (produced), and saw no credit of the £21 so received on the 26th December. Cross-examined: It was not a very "wet" night at any of the lodge meetings. There was an amount of 6d. allowed for "refreshment" at certain committee nights. He had no idea of what was spent; but if there was more spent the reckoning was called in, and the amount was subscribed. There was a safe purchased which cost £7. He had no idea of what was given to get it. Re-examined: The defendant was expelled from the lodge by a resolution of the members. The second case was then taken. Mr. McLeod, secretary of the Pride of the Wear Lodge, Monkwearmouth, in 1874, said he knew Joseph Fenwick, living in Dock Street; then he was originally in the Pride Lodge, Wallsend. In that year three payments were made to this member, amounting in the aggregate to 27s., being three weeks' sick pay. That was the whole of the amount ever paid. John Middlemiss, Heaton Hall, Newcastle, said in the beginning of the year he audited the books of the society. The book produced was the cash book kept by the defendant, and the black figures were in his handwriting. He proceeded to read the various entries from the book debited to the sick pay of Joseph Fenwick: November 7th, 10s.;

December 5th, £1 16s., and 10s. on the same date; March 27th, £2 5s.; May 22nd, 1875, £1 1s.; and August 14th, £1 4s. 4d. Mr. Clarke, for the defence, admitted, as he had done at the outset, that the money had been misapplied, but that the misappropriation had occurred in this way. There were two funds in the society separate and distinct—one called the Management and Incidental Fund and the other the Sick and Funeral Fund, and there had always been to the credit of the Sick and Funeral Fund a large amount of money accumulating, while the Management and Incidental Fund had been as much as £28 short. Some short time ago, and prior to the present proceedings being taken, several other lodges, as well as this one, applied to have the amount paid from the one to the other. One meeting night there was a great deal of drinking went on, and instead of the members paying their shares the secretary paid it. Some time last year previous to the resignation—as he was instructed—of his client, the defendant levied sixpence a head on the members to make up the deficiency. They refused to do this, and said he must get out of the difficulty the best way he could. He then resigned. He had been ten years secretary of the society, and had previously borne a good character. He believed the prosecution would be content with a conviction, and the Bench had power to inflict a small fine and make up the money, giving him a little time to do it in, under the 9th sub-section of section 10, 38 & 39 Vic., c. 60.

Mr. Bell: Yes; but there's another point of view from which to look upon it.

Mr. Clarke: Yes, from public point of view. But I think the public will be satisfied, and it will be sufficient to deter other people from doing such a thing, the fact of having to make up the money and the derogatory feeling of being brought here.

Mr. Bell (to the defendant): You will have to repay the £6 15s. 4d. and pay a fine of £5, or undergo one month's imprisonment, in the first case; and you will have to repay the £21 and pay a fine of £5, or undergo two months' imprisonment with hard labour in the second.

Mr. Clarke asked for time.

Mr. Bell: I don't see that we have any discretionary power in the matter.

Mr. Drummond said there was nothing in the Act either one way or the other.

Mr. Clarke said the defendant was only a poor blacksmith, and it would be impossible to get it at once. The amount was a very large one.

Mr. Bell; Yes, the offence is all the worse for that.

It was ultimately arranged that the defendant and the society should come to terms as to the mode of payment.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *secs.* 84-90.

CASE 198.

COURT OF APPEAL. THE LORD CHANCELLOR. MASTER OF THE ROLLS. FRY, L.J. 1891. *May* 13.

VERNON AND OTHERS *v.* WATSON.

Friendly Society—Misappropriation of Property—Conviction under Statute—Imprisonment for default in payment—Conviction and punishment a bar to subsequent action—Friendly Societies Act, 1875 (38 & 39 *Vic. cap.* 60) *sec.* 16, *sub-sec.* 9.

By section 16, sub-section 9, of the Friendly Societies Act, 1875, if any person, having property of a friendly society in his possession, withhold or misapplies the same, he shall be liable on summary conviction to a penalty not exceeding £20 and costs "and to be ordered to deliver up all such property, or to repay all moneys applied improperly, and in default of such delivery or repayment, or of the payment of such penalty and costs, to be imprisoned for any time not exceeding three months."

Where, under sub-section 9, a penalty was imposed upon the respondent for misapplying the moneys of a friendly society, and an order to repay such moneys having been made against him, he was imprisoned for default in paying the penalty and repaying the moneys.

Held (affirming the decision of the Queen's Bench Division), that the order to repay the moneys misapplied by the respondent, and the imprisonment, which was execution upon it, were a bar to an action subsequently brought by the society for the recovery of the same moneys.

Appeal from a judgment of the Queen's Bench Division.

The defendant, an officer of a friendly society, was charged under the Friendly Societies Act, 1875 (38 & 39 Vic. c. 60), s. 16, sub-s. 9, with the misappropriation of a sum of money belonging to the society, and was convicted, and ordered to repay the money and pay a penalty of £5 and costs. He made default in complying with this order, and was imprisoned for a period of two months with hard labour, and served the sentence. The plaintiffs, who were the trustees of the society, applied to the magistrates' clerk for a distress warrant to enable them to realize the amount due. The magistrates' clerk being of opinion that the case came within 11 & 12 Vic. c. 43, s. 23, and that section 19 of the same Act did not apply, refused the warrant. The plaintiffs, then issued a specially endorsed writ, and applied for judgment under order 14. Leave to defend was given, and the case was ordered to be tried in the County Court of Derbyshire, under section 65 of the County Courts Act, 1888 (51 & 52 Vic., c. 43). The County Court Judge gave judgment for the plaintiffs, and the defendant appealed to the Queen's Bench Division, who reversed the County Court Judge's decision.

The plaintiffs appealed.

Mr. Hextall for the appellants: It is submitted that the decision in Knight *v.* Whitmore, by which the learned judges in the court below thought themselves bound, was wrong. The order made by the magistrates for the repayment of the moneys misapplied by the respondent, was equivalent to a judgment upon which an action could be

brought. The remedy given by section 16, sub-section 9, of the Friendly Societies Act, 1875, is cumulative, and the appellants are entitled to pursue both that remedy, and the remedy by civil action at common law, until they obtain satisfaction of the debt due to them. The imprisonment was not a satisfaction of the debt: Regina *v.* Hemsworth. At any rate the intention of the legislature to take away the right of action at common law is not expressed with sufficient clearness to enable that construction to be put upon the statute.

Mr. J. H. Etherington Smith for the respondent was not called upon to argue.

Lord Halsbury, L.C.: I am of opinion that this appeal should be dismissed. The legislature, for reasons sufficient to itself, has passed an Act of Parliament which gives a peculiar process in cases where the property of friendly societies is improperly withheld or misapplied. It has provided that proceedings—partly of a civil and partly of a criminal kind—shall be taken before magistrates. If the operation of the statute had been confined to criminal proceedings I should have entertained no doubt that imprisonment for the criminal offence afforded no answer to a civil claim for debt. The old principle of law, founded upon public policy and expediency—that where a claim is founded upon a matter which might be the subject of criminal proceedings, the person seeking to enforce it must prosecute for the criminal offence before he can sue in a civil action—is not in question here. In the statute in question two different proceedings have been mixed together by the act of the legislature. First, there is a penalty imposed for wilfully withholding or misapplying the property of the society, and then there follows that which is strictly and properly a civil proceeding, namely, an order to deliver up the property or repay the money improperly withheld or misapplied, and if default be made in such delivery or repayment, or if default be made in payment of the penalty and costs, in either of those cases the statute prescribes a maximum amount of imprisonment, which is to be a satisfaction for the criminal offence, and also for the non-payment of the civil debt and costs. We must apply the ordinary principles of law to each part of the procedure. In fact the legislation points itself in that direction, because one part of the section provides that the criminal proceedings taken under it shall not interfere with the right to indict, but there is no corresponding provision with respect to the civil part of the process. The result in the present case is that the respondent has been summoned for a civil debt; that he has been ordered to pay it, and that he has had execution against him in respect of it. It seems to me impossible to contend on the true construction of the statute that there has not been execution executed and a satisfaction of the debt. Under those circumstances it is impossible to say that there is any power to sue again for the same debt. I think that the decision of the court below was right if it proceeded upon that ground. This appeal should be dismissed.

Lord Esher, M.R.: I think that all the cases specified in section 16, sub-section 9, were made criminal offences. Though some of them were not criminal offences before the Act was passed, they are made so by sub-section 9. They are: Obtaining possession by false representation or imposition of any property of a society; withholding, which means wilfully withholding, or misapplying the same, or wilfully applying any part thereof to purposes other than those expressed or directed in the

rules of the society. In each of these cases the person doing the act specified is made liable on summary conviction to a penalty not exceeding £20 and costs, "and to be ordered to deliver up all such property, or to repay all moneys applied improperly." I doubt whether the magistrates have any power, unless they inflict the penalty, to order the delivery up of the property, or the repayment of the money, because sub-section 9 proceeds: "And in default of such delivery or repayment, or of the payment of such penalty and costs aforesaid, to be imprisoned, with or without hard labour, for any term not exceeding three months; but nothing herein contained prevents any such person from being proceeded against by way of indictment, if not previously convicted of the same offence under the provisions of this Act." I think that the legislature has treated all the things specified in sub-section 9 as offences. The sentence, therefore, for misappropriating money belonging to the society is a sentence for an offence, but part of the sentence is that the money shall be repaid. The sentence, therefore, is an order for the repayment of the money found to be due. It is a judgment for the repayment of the money, and the person who has committed the offence is sent to prison for non-payment. The imprisonment is execution with regard to the money found to be due, as well as punishment for the criminal offence. You have, therefore, an order to repay the money; then execution by imprisonment, which is execution upon the person of the debtor. I doubt whether a distress warrant could be issued to enforce the order; but the Act provides a mode of execution by imprisonment. In my opinion sub-section 9 does not oblige the society to proceed under its provisions. There is nothing to prevent them from bringing an action to recover the money misappropriated. In that sense the remedy given by the sub-section is cumulative; but it is more correct to call it an alternative remedy, because if a party chooses to take the remedy provided by the statute, and gets an order for repayment under sub-section 9 and execution upon that order, he cannot afterwards, according to ordinary principles, bring an action for the same debt. This appeal fails and should be dismissed.

Fry, L. J.: I also think that this appeal fails. I express no opinion upon some of the points dealt with by the Master of the Rolls in his judgment. Sub-section 9 does two things: it inflicts a penalty, and enables the magistrates to make an order for delivery up of property or the repayment of money. Such an order is an order giving effect to civil rights. Then the sub-section couples together "such delivery or repayment" and "the payment of such penalty," and provides that, if default be made in doing both, the magistrates shall have power to send the person making the default to prison for a specified time. That, to my mind, is execution of the judgment for repayment of the money. It is execution of so much of the order as is of a civil nature. The two things, the civil and criminal procedure, are mixed and bound together in the sub-section. It follows that the imprisonment is a satisfaction not only of the criminal, but of the civil remedy, and the plaintiffs having obtained satisfaction of their civil remedy, cannot afterwards bring another action.

Appeal dismissed.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 87.

CASE 199.

HIGH COURT OF JUSTICE. CHANCERY DIVISION. 1884. *Nov.* 14. *Before* NORTH, J.

CARLISLE BANKING COMPANY *v.* THOMPSON.

Building Society—Reconveyance—Indorsed receipt —Priority—37 & 38 *Vic., cap.* 42, *sec.* 42.

A piece of land was mortgaged to a friendly society, and by way of second mortgage to a banking company. A building society agreed to pay off the first mortgage and to make a further advance, having no notice of the second mortgage.

Accordingly by a deed indorsed on the first mortgage deed the first mortgagees reconveyed to the mortgagor; and by another deed he conveyed the land to the building society to secure the repayment of the sum paid to the first mortgagees and the further advance.

Held that as the legal estate had passed by a reconveyance and not by a receipt under 37 & 38 Vic., c. 42, s. 42, it was vested in the building society, and gave them priority over the second mortgagees.

CASE 200.

HIGH COURT OF JUSTICE (CANADA). 1896, *Feb.* 27. *Before* THE HON. CHIEF JUSTICE MEREDITH.

THE MANCHESTER UNITY INDEPENDENT ORDER OF ODDFELLOWS *v.* THE CANADIAN ORDER OF ODDFELLOWS.

Friendly Society—Exclusive right of name—Injunction restraining defendant society from using the words "Manchester Unity" as part of their name.

This action coming on this day to be heard before this court by way of motion for judgment in presence of counsel for plaintiffs and defendants, upon hearing read the writ of summons herein and the endorsements thereon and upon hearing what was alleged by counsel aforesaid and counsel aforesaid consenting thereto: 1. This court doth order and adjudge that the defendants and each of them, their and each of their servants, workmen and agents be and they are hereby perpetually restrained from using as part of the name of the Canadian Order of Oddfellows the words "Manchester Unity." 2. And this court doth further order and adjudge that the defendants and each of them do forthwith deliver up to be cancelled all books, papers, writings, circulars, documents or literature owned or issued by the defendants or either of them and bearing the name "Manchester Unity" as part of the name of the defendants the Canadian Order of Oddfellows, and that the same be forthwith deposited with one of the registrars of this court and by him destroyed. 3. And this court doth further order and adjudge that the defendants and each of them do account for all such books, papers, writings, circulars, documents and literature issued by them or either of

them or by any lodge or body under their jurisdiction. 4. And this court doth further order and adjudge that the defendants pay to the plaintiffs their costs of this action between solicitor and client forthwith after taxation.

Judgment signed the 28th day of February, 1896.

M. B. JACKSON,
Entd. Feb. 24th, 1896.
J.B. 5, p. 425.
R. F. KILLOLY.

A. F. MACLEAN,
Clerk Weekly Court.

Examined. GEO. M. LEE, Clerk of Records and Writs.

N.B.—The above is a re-print from Report supplied by a member of the Manchester Unity in Canada.

RE THE FRIENDLY SOCIETIES ACT, 1875, S. 15 (3) *EX PARTE* THE INDEPENDENT ORDER OF ODDFELLOWS, MANCHESTER UNITY FRIENDLY SOCIETY.

NOMINATION FOR FUNERAL MONEY.

CASE FOR THE OPINION OF COUNSEL.

The society is a body of great importance. On the 1st January, 1890, its members numbered 651,890. During the year 1888 its receipts amounted to £930,622, and its payments to £681,167. Of the latter sum £124,773 was paid for funeral benefits. To the members of a society paying annually so large a sum in funeral benefits it is obviously of the first importance that the law regulating the means by which a member may, during his lifetime, dispose of the funeral benefit when it becomes receivable after his death, should be placed upon a certain footing.

Apart from the provisions of the Friendly Societies Acts, the funeral benefit forms part of the deceased member's personal estate, and is payable by the society to his personal representative; but in order to relieve persons in a humble condition in life from the expense of making and proving a will, or taking out letters of administration where the estate of the deceased consists only of the funeral benefit, payable by a friendly society, the Friendly Societies Act, 1875, has intervened by section 15 (3, 4, and 5). The sum of £50 mentioned in sub-sections 3 and 4 has been raised to £100 by 46 & 47 Vic., c. 47, s. 3.

In practice a difficulty has arisen in construing sub-section 3, it having been frequently contended that the will of a member is a sufficient revocation of a previous valid nomination. This contention has given rise to litigation and to consequent loss and disappointment, the decisions of magistrates and County Court Judges on the subject having been conflicting.

The directors of the society accordingly obtained a solicitor's opinion on the subject, and this will be found printed in a convenient form at pp. 49 and 51 of the proceedings of the Grand Annual Movable Committee of the Society for 1890 (which with other documents were forwarded to the learned counsel).

The only rule of the society on the subject is Order Rule 60 (3), at p. 76 of the print of the rules of the Order sent herewith.

Counsel is requested to advise—

(1) Is the due execution of a will by a member disposing of his Funeral Benefit, without delivering or sending the same, or a duplicate thereof, at or to the office of the society, or of a branch, a sufficient revocation of a valid nomination previously made.

(2) Generally.

OPINION.

1. I am of opinion that the execution of a will by a member disposing of his Funeral Benefit, without delivering or sending the same, or a duplicate thereof, at or to the office of the society, so as to comply with section 15, sub-section 3, of the Friendly Societies Act of 1875, is *not* a sufficient revocation (as between the society and those claiming under the members) of a valid nomination previously made, and that the person named in such nomination can give a good receipt to the society.

2. It would, however, be prudent for any society to obtain the concurrence of the executor in the receipt, where it can be obtained, but I do not think they can insist on it unless the executor gives them notice not to pay to the nominee.

HORACE DAVEY,

July 12th, 1890. 8, Old Square, Lincoln's Inn.

CASE 201.

ROCHESTER COUNTY COURT.
1890.
Wednesday, April 23.
Before HIS HONOUR JUDGE COX.

BIGGS *v.* LEWIS.

Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap.* 60), *sec.* 15—*Appointment of nominee—No absolute title.*

This case was heard before his Honour on the 16th April, when judgment was reserved. Mr. McLellan (Wood and McLellan) for plaintiff and Mr. Greathead for defendant.

His Honour now delivered judgment as follows :—This case, in which I reserved judgment at the last court, involves a question of considerable importance to friendly societies. The plaintiffs are the executors of the will of John Taylor, who was a member of the friendly society called Lodge No. 16 of the United Ancient Order of Druids. In April, 1885, Lewis signed a certificate in the following form : "I, the undersigned, being a member of the sick and funeral fund of the above lodge, hereby appoint Thomas Lewis, receiving officer, Gillingham, Kent, my nominee to receive the amount which will be payable from the above lodge in the

event of my being then a free member thereof." This form is very ill-expressed, for it does not state the time meant by the word "then;" though no doubt that word refers to the decease of Taylor. In August, 1885, Taylor made his will and appointed the plaintiffs executors. The testator died in May, 1889, and in the following July probate was granted to the plaintiffs. In the following November the friendly society paid £12 to the defendant as nominee of the deceased Taylor. The plaintiffs now seek to recover that sum from Lewis, and contend that it forms part of the personal estate of the testator, but on the part of the defendant it is contended that the nomination operated as an absolute gift to Lewis. Such nominations are regulated by statute. The Friendly Societies Act, 1875, s. 15, sub-s. 3, provides that a member of a society may appoint a nominee "to whom any moneys payable by the society on the death of such member not exceeding £50 shall be paid at his decease, and may from time to time revoke or vary such nomination." The 6th and 9th rules of this society are in accordance with this provision. This power to revoke the nomination is, in my opinion, fatal to the contention that it operated as a gift. The very essence of a gift is that it should be irrevocable, and that the property given should actually pass to the donee by the instrument of gift. The statutory provisions respecting nominees were made for the protection of friendly societies, and enable them safely to pay the nominee, but do not confer an absolute title on him. If the testator had intended to do this he might have bequeathed the money to Lewis; but he has not done so. I am of opinion that the money forms part of the personal estate of the testator, and therefore my judgment will be for the plaintiffs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 56, 57, *and* 58; *also Provident Nominations and Small Intestacies Act*, 1883, 46 & 47 *Vic., cap.* 47, *secs.* 4-9.

CASE 202.

ROCHDALE COUNTY COURT. 1892. *Jan.* 7. *Before* JUDGE JONES.

FIELDING AND ANOTHER *v.* ROCHDALE EQUITABLE PIONEERS SOCIETY.

Industrial and Provident Societies Act, 1876, *sec.* 11, *sub-sec.* 5—*Claim for Moneys Bequeathed by Will—Nomination—Compliance with Statute.*

Held that the nomination was in the nature of a statutory will, and that power of revocation was also statutory, and that therefore in the making *or revocation* of a nomination the directions of the statute must be complied with which had not been done, and judgment was given for the defendant society.

The question in dispute in this case was with reference to the revocation of a nomination made by a member pursuant to the provisions of the Friendly Societies Act. His Honour delivered judgment as follows:—This action is brought by plaintiffs, as executors of the will of Mary Ann Fielding, for the recovery of the sum of £50 deposited with the defendant society, a society registered under the Industrial and

Provident Societies Act of 1876. The facts of the case are shortly these: On the 13th of September, 1888, the testatrix, Mary Ann Fielding, was entitled to the sum of £53 6s. 4d., deposited by her with the defendant society. On that day she made a nomination in favour of her seven children which included the two plaintiffs. Three days later, namely, on the 16th of September, 1888, she made her will by which she bequeathed to the two plaintiffs the sum of £26 each, which was in the defendant society, and on the next day the testatrix died. The will was proved on the 31st December, 1888, and it is admitted that the probate only and not the original will was afterwards produced to the defendant society. Now the question for my decision is whether or not the testatrix's will operated as a revocation of the nomination of the 13th September, 1888. To decide that question it is necessary for me to refer to the statute under which the nomination was made, namely, the Industrial and Provident Societies Act, 1876. By section 11, sub-section 5 of that Act, it provides that "A member of a society, not being under the age of 16 years, may, by writing under his hand, delivered at or sent to the registered office of the society, nominate any person not being an officer or servant of the society, unless such officer so concerned is a husband, wife, father, mother, child, brother, sister, nephew, or niece of the nominator to whom his shares in the society shall be transferred at his decease, provided that the amount credited to him in the books of the society does not exceed £50, and may from time to time revoke or vary such nomination by writing, under his hand, similarly delivered or sent, but not otherwise. And every such society shall keep a book wherein the names of all persons so nominated shall be regularly entered, and the shares comprised under any such nomination shall be transferable to the nominee. Although the rules of the society declare its shares to be generally untransferable, yet on receiving satisfactory proof of the death of the nominator, the committee of the society shall either transfer the shares in manner directed on such nomination, or pay to the several persons entitled thereunder the full value of his interest, at their option, unless the shares, if transferred to any such nominee, would raise his interest in the society to any amount exceeding £200, in which case they shall pay him the full value of such shares, not exceeding the sum fixed." Continuing, his Honour said: The Act does not supply the form of nomination, but it was admitted by both parties that a document in writing, signed by the party nominating, in whatever form it might be, so long as it showed the clear intention to nominate, would to that extent comply with the statute, hence the real contest in this case is as to the true meaning of the words "deliver at" or "send to" the registered office of the society, contained in sub-section 5 of section 11 of the Act. On behalf of the plaintiffs it was contended that the mere production of the nomination to the society, without leaving it in their custody, would be sufficient compliance with the statute, and hence the production in this case to the defendant society of the probate of the will which contained a revocation of the nomination would satisfy the statute. For the defendant society it was contended that the nomination is in the nature of a statutory will, and the power of revocation is also statutory, and, therefore, in the making or revoking of a nomination the directions of the statute must be strictly complied with, and further, that the probate produced to the defendant society in this case was not the writing under the hand of the party who made the nomination. I cannot agree with the contention on behalf of the plaintiffs, that the mere production of the nomination or revocation, as the case may be to the society, without

leaving it in their custody, would be a sufficient compliance with the statute, as such a construction, in my opinion, would be contrary to the intention of the statute. The intention of the statute is, I think, that the document should remain in the possession of the society. This view is, I think, confirmed by section 4 of the Provident Nomination and Small Intestacies Act, which provides that the nomination may be partly printed, and if made in a book kept at the office shall be taken to be delivered at such office. Therefore a will may operate as a nomination or revocation as the case may be, yet in my judgment it will not be a valid nomination or revocation unless the original will which was signed by the testatrix is left in the custody of the society at their office, and that the mere production of such signed will or probate thereof would not be a compliance with the statute. In the whole I agree with the view taken on behalf of the defendant society, that the nomination is in the nature of a statutory will, and power of revocation is also statutory, and, therefore, in the making or revocation of a nomination the directions of the statute must be complied with. I cannot agree with the further contention of the plaintiffs that the production to the defendant society of the probate instead of the original will was such defective execution of a power as a Court of Equity would relieve him. I enter judgment for the defendant society.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 56; *also Provident Nomination and Small Intestacies Act*, 1883, 46 & 47 *Vic., cap.* 47.

STONE COUNTY COURT.
1885.
May 13.
Before
JUDGE JORDAN.

CASE 203.

HUGHES *v.* HARDY.

Friendly Societies Act, 1875 (38 & 39 *Vic., cap.* 60) *sec.* 15—*Provident Nominations and Small Intestacies Act*, 1883 (46 & 47 *Vic. cap.* 47) *sec.* 4—*Claim for Funeral Money—Nomination.*

Held that the "nomination" which was taken possession of by the secretary of the society in the bedroom of the deceased was a valid nomination.

This was a case in which the plaintiff, a person named George Hughes, sued George Hardy, the secretary of the Bishop Ryder Lodge of Oddfellows, M.U., held at Eccleshall, for the sum of £10, due on the death of his brother, William Hughes, formerly a member of the above lodge. To this action William Slinn, the landlord of the King's Head Inn, at Eccleshall, also became a claimant on the ground that the deceased man had executed a nomination to him for payment of the £10 payable at death, William Hughes being indebted to him for food and lodgings during the illness which preceded his decease.—Mr. Smith, of Hanley, appeared for the plaintiff, and Mr. Boddam (instructed by Mr. Blakiston, solicitor to the Unity) for the defendant.—The facts of the case were these: The deceased, William Hughes, a butcher, had been a member of the Bishop Ryder Lodge since 1840. In August last he was indisposed,

and not having any relatives residing at Eccleshall he went to live at the King's Head, where he was taken ill, and subsequently died on the 21st February last. About a fortnight before his death he made a nomination, whilst in bed, of his funeral money, being at the time quite conscious and sane. The nomination ran thus :—

I, William Hughes, now and for some time past living at the King's Head Inn, Eccleshall, in consideration of the care and expense he has been at with me, authorise Mr. William Slinn to receive what money there is due to me from my club. Witness my hand this 6th day of February, 1885.

Witness, Edwin Challinor, N.G. WILLIAM HUGHES.

This nomination was witnessed also by George Hardy, the defendant, who took possession of the same in the bedroom of the deceased. Immediately after Hughes' death, the defendant, as is customary in cases where there are no relatives—and it may be mentioned that his relatives had taken but scanty notice of him—ordered the coffin, and was making other arrangements for the funeral, when the sister of the deceased made her appearance and took the matter of interment into her hands. The £10 funeral money was afterwards demanded in writing by the plaintiff, but in consequence of the nomination made by the deceased this was not paid : hence the proceedings in the County Court. It should be stated that neither the lodge nor the Stafford District refused to pay the £10 due on the death of the deceased—the only contention being, as there were two claimants, whether the Act of Parliament which gives the power of nomination was to be set aside by the relatives of the deceased.—The defendant Hardy proved the due execution of the nomination.—Mr. Boddam, for the defendant, first suggested that the rules of the society provided for the settlement of disputes by arbitration, and in this his Honour concurred and said he had no jurisdiction ; but, continued the learned counsel, the present case is not a dispute, the society never having refused to acknowledge its liability to the payment of the £10 ; but it sought to establish a principle giving the power to members, by the Act of Parliament, to enable them to nominate a person to whom they might leave the money due at death. The learned counsel then referred to the 15th section of the 38 & 39 Vic., c. 60, paragraph 3, which provides that "a member of a society (other than a benevolent society or working men's club), not being under the age of 16 years, may by writing under his hand delivered at or sent to the registered office of the society, nominate any person, not being an officer or servant of the society, to whom any moneys payable by the society on the death of such member, not exceeding £50, shall be paid at his decease, and may from time to time revoke or vary such nomination by a writing under his hand, similarly delivered or sent ; and on receiving satisfactory proof of the death of a nominator the society shall pay to the nominee the amount due to the deceased member, not exceeding the sum aforesaid." Under this section of the Friendly Societies Act of 1875, he submitted that the nominee of the deceased was entitled to the funeral money allowed by the lodge. After carefully examining the nomination paper in question and reading aloud the section of the Act of Parliament cited by Mr. Boddam, his Honour pronounced an opinion that the nomination was good, and that Slinn was entitled to the money.—Mr. Smith submitted a plea that the testator was too ill to perform the act in

question, and also that the handwriting was not anything like that of the deceased, some of which he passed to his Honour; but the judge observed that it must be remembered that the deceased was very ill in bed at the time, and that there was not the slightest reason to doubt the truthfulness of the defendant, who had given his evidence in a very straightforward and honest manner. He considered also that the society had acted in a fair and honourable way, and he wished that in all other society disputes which came before him as much candour and honesty was observed. Judgment was then given for the defendant, but without costs.

CASE 204.

OSWESTRY COUNTY COURT.

1891. *May 5.*

HUGHES *v.* PARRY.

Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap.* 39), *sec.* 15 — *Burial Money — Nomination — Rights of executor.*

In the Oswestry County Court, on the 5th May, his Honour Judge Harris Lea gave judgment in the above case.

Mr. Edward Jones appeared for the plaintiff, and Mr. Jackson for the defendant.

His Honour: John Bolver, deceased, was a member of the Oswestry Union Friendly Society, which is a society certified under the Friendly Societies Acts, and is what is known as a burial society, one of its principal objects being to provide burial money on the decease of a member. By rule 29 of the society it is provided that "the secretary shall keep a book in which the members may nominate in writing the person to whom the burial money shall be paid on their decease, such person being the wife, father, mother, child, brother or sister, nephew or niece, of such member." On the 14th September, 1889, John Bolver nominated his daughter, the defendant, Ann Parry, under the above rule. On the 8th January, 1889, John Bolver made his will, and thereby bequeathed all his real and personal estate, together with all other moneys to which he might be entitled at the time of his decease, to the plaintiff, John Hughes, upon trust for his children equally, and appointed John Hughes his executor. The testator died on the 22nd July, 1891, without having revoked or altered either his will or the nomination above referred to. The amount which became payable under the rules of the society was £30 15s. 2d., and there was cash in the house £2 5s. 6d. These sums were received by the defendant Ann Parry, and are now claimed by the executor, who has proved the will. The defendant contends that, under the nomination, she has the right to receive and retain the £30 15s. 2d., and in any case has a right to retain £9 13s. 4d., the amount of the funeral expenses, and £2 10s. 6d. paid to the testator's doctor, for which sums she has entered a counter-claim. I think there can be no doubt she had a right to receive the £30 15s. 2d. from the society, and that her receipt is a valid discharge to the society, and the question now to be decided is, whether she has a right to retain this sum against the executor. The right to nominate a person to receive money was conferred by the Friendly Societies Act, 1875, s. 15, sub-s. 3; but the

question in this case mainly depends on the construction to be placed on the Provident Nominations and Small Intestacies Act, 1883, ss. 5 to 9, and I think the particular question is whether the words at the end of section 9, "but such next of kin, representative, or claimant, shall have remedy for recovery of such money, so paid as aforesaid, against the person or persons who shall have received the same," refer to nominations under the Friendly Societies Act, 1875, or only to the two previous clauses, 7 and 8, in the Act of 1883. It was contended that those words could only apply to sections 7 and 8 because the opening words of section 9 are "all payments made by directors under powers aforesaid." And where there is a nomination the directors have no power, but only a duty, to pay to the nominee; whereas, where there is an intestacy and no nomination, the directors have considerable powers of deciding who shall be the persons to receive the money. This contention is not satisfactory to me, and I think that, if such a restricted use of the word "powers" had been intended, the clause would not have commenced with the words "all payments." But even if the Act of 1883 does not cover the case of a nomination, then there is the more simple and general question of whether a nomination under the Act of 1875 is valid against a bequest by will, and whether, notwithstanding the nomination, the fund, or at all events the balance of the fund after payment of funeral expenses, is not assets in the hands of the executor. In my judgment, both under the Act of 1883, and under the Act of 1875 the executor is entitled. I was referred to the case of Ashby *v.* Costin (21 Q.B. Div. 401), and of course should follow that authority so far as it affects the questions now raised. But I do not think that case does much affect the present one, because in that case there was no nomination and no will, and though the learned judges in that case expressed an opinion that if there had been a will the amount would have been assets for the payment of debts (and in this my decision follows that case), still it does not necessarily follow that they would have considered that to be the result if there had been a nomination as well as a will. I therefore give judgment for the plaintiff on the claim; but I think the defendant is entitled to be paid any sum properly expended by her for funeral expenses, and for the doctor's bill, and I therefore give judgment for the defendant on the counter-claim, subject to a reference to the registrar as to any particular items of the funeral expenses which the plaintiff objects to. The costs on the claim and counter-claim will follow the event in each case.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *secs.* 56, 57, *and* 58, *also Provident Nominations and Small Intestacies Act*, 1883 (46 & 47 *Vic., cap.* 47), *secs.* 4-9.

CASE 205. 87 L T J 272.

CHANCERY DIVISION. KAY, J. 1889. *Aug.* 1.

HARRIS *v.* THE UNITED KINGDOM POSTAL AND TELEGRAPH SERVICE BENEVOLENT SOCIETY.

Friendly Society — Unregistered society — Power under rules for members to nominate persons to receive benefits — Validity of power.

The object of an unregistered friendly or benefit society was declared

by its rules to be to enrol as members of the society post and telegraph officials for the purpose of contributing small sums for the benefit of the widows, orphans, other relatives, or nominees of members of the society, at their death, from whatever cause such death might arise. The members were to consist of two classes—first and second—at their option. Those in the first class had to pay an entrance fee of 1s., and those in the second class an entrance fee of 6d. The rules also provided that the central secretary should announce as soon as possible all cases of deaths of members to each of the local secretaries, and, immediately after the receipt of an announcement of the death of any member enrolled in the second class, they must collect from every member in both classes (enrolled on or before the date of the death announced) whom they represented a contribution of 1d.; and on receipt of the announcement of the death of a member enrolled in the first class they must collect from every member in both classes (enrolled on or before the date of the death announced) a contribution of 1d. and an additional 4d. from every member enrolled in the first class, and duly remit the amount so collected to the central secretary, less the cost for postage, within seven days from the receipt of the announcement, and the central secretary should, with as little delay as possible, pay the contributions so collected to nominee of the deceased member, less only the actual cost incurred in and about the receipt and the remittance of the money. G. H. was a first class member of the society, and a payment under its rules amounting to £148 8s. 1d. was due in respect of his death, which occurred in March, 1889. Pursuant to such rules, G. H. had nominated H. H. to receive all benefits that might be due on his behalf from the society after his decease. A dispute arose in regard to such payment. It was claimed by H. H., as the nominee of G. H., and also by A. B., as the administrator of the estate of G. H. On behalf of A. B. it was contended that this being an unregistered society (although not necessarily an illegal society) the powers contained in the Friendly Societies Acts in regard to nominations had no application; and that, at any rate, the present amount was in excess of the limit (£100) authorised by those statutes. This being so, it was contended that the law would only recognise the right of legal personal representative of the deceased to receive the money; and that the society could not by its rules defeat the right of the Crown to legacy and probate duty.

Held that the payment did not come out of the funds of the society, but was a contribution by the members for the benefit of the person nominated by G. H.; and that practically it was equivalent to a contract by A. with B. that B. would on A.'s death pay to C. a certain sum of money.

Held therefore that the claim of the nominee, H. H., must prevail.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *secs.* 56, 57, *and* 58, *also Provident Nominations and Small Intestacies Act*, 1883, 46 & 47 *Vic.*, *cap.* 47, *secs.* 4-9.

CASE 206.

WOLVERHAMPTON POLICE COURT. 1890. *Jan.* 15.

WRIGHT AND ANOTHER *v.* DARKHOUSE FRIENDLY SOCIETY.

Friendly Society—Dispute—Claim for Insurance Money—Nomination unrevoked—Will—Judgment upholding Nomination notwithstanding that Will was made subsequent thereto.

At the Wolverhampton Police Court, on Wednesday, the 15th January, 1890, a claim to a sum of £15 from the Darkhouse Friendly Society, Coseley, was decided by the stipendiary. The parties concerned were John George Wright, shingler, Ettingshall, and George Wellings, of Sheffield, both of whom claimed the insurance money of the late John Wellings, of Barlboro', the former under a nomination and the latter under a will. The money was withheld by the secretary (Mr. William Evans), he being in doubt as to whom it belonged. Mr. Lawrence (Messrs. Underhill and Lawrence) represented Wright, and Mr. C. W. Alderson appeared for G. Wellings. The former is the son-in-law of the deceased, and the latter his son. Mr. Lawrence said his client claimed the £15 under the following circumstances:—In accordance with the rules of the society, the deceased, who died recently, made, on the 17th of April, 1888, a nomination in favour of Wright, wherein he desired his insurance money to be paid to Wright, with whom he was living at the time of his death. That nomination had never been revoked. The deceased went to live with his son in February, 1887, and a letter unsigned was sent to Mr. Evans on the 27th March, 1889, purporting to be a withdrawal of the nomination. Mr. Evans replied that it was not a proper withdrawal, and he suggested that John Wellings should make out a proper revocation. That was not done. The deceased, however, made a will, and bequeathed the money to the other applicant. Shortly, his (Mr. Lawrence's) client claimed under the unrevoked nomination of 1888, and Wellings claimed as executor and legatee under the will. Mr. Alderson contended that the deceased thought all that was necessary had been done when he sent the letter to the secretary of the society. Mr. Lawrence remarked that the deceased must have been a shrewd man to live with his stepson and afterwards with his son on the promise that they should receive the death money. The stipendiary said the old Mr. John Wellings was, as Mr. Lawrence suggested, a clever man. The letter purported to revoke in somebody else's handwriting the nomination of John Wellings. That was not sufficient for the statute. Again, the will was made on the 2nd of February, and the letter which required the withdrawal was dated the 27th March, and it was, therefore, clear that the will was not entitled to take the place of what Mr. Evans wanted—a real proper withdrawal. At the time of the man's death the nomination was still in force, and the money must be paid over to Mr. Wright, for whom he gave a verdict. Mr. Lawrence pointed out that the secretary of the society had had considerable trouble with the matter, and the stipendiary said he thought that Mr. Evans had acted wisely in not paying over the money unless he had some legal information to back him up.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *secs.* 56, 57, *and* 58, *also Provident Nominations and Small Intestacies Act*, 1883, 46 & 47 *Vic., cap.* 47, *secs.* 4-9.

QUEEN'S BENCH DIVISION. DUBLIN. 1891. *Nov.* 17. *Before* GIBSON, J. HARRISON, J. AND O'BRIEN, J.

CASE 207.

REGINA (DUANE) *v.* JUSTICES OF DUBLIN.

Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap.* 60), *sec.* 22—*Application to quash order of magistrate allowing claim by member for funeral money—Dispute.*

Held that the magistrate had no jurisdiction to adjudicate in the matter.

The case of the Queen (Duane) *v.* the Justices of Dublin came on for argument, on a motion to make absolute a conditional order for a certiorari to bring up and quash an order of Mr. Keys, Q.C., awarding £10 and £1 costs against the Ancient Order of Foresters' Society for mortality money due to Michael Maguire, a member of the society, upon the death of his wife, Anne Maguire. The application was made by the executive council of the Order.

Mr. Constantine Molloy, Q.C., and Mr. J. E. Condon (on behalf of the executive council of the Order) applied to make absolute the conditional order. Under the Act 38 & 39 Vic., c. 60, s. 22, where the rules of the society provide a mode of adjustment of the claims of members the jurisdiction of the justices is ousted. The 7th section of the society's rules, No. 12, provides—

> ". . . . and the said committee shall decide all disputes, " charges, complaints, or claims by a member, or person claiming " on account of a member, subject to further appeal by either party " to the arbitration of the Dublin District, and after that to the final " arbitrators, as provided for in the 88th and 90th general laws. " The decision of the final arbitrators shall be binding and conclusive " upon all parties without further appeal, and is not removable into " any court of law or restrainable by injunction; and application " for the enforcement thereof may be made to the County Court, " pursuant to section 22 of the Friendly Societies Act, 1875. . . ."

The case is not within section 30 of the Friendly Societies Act, 1875, as no contributions are received at a greater distance than ten miles from the registered office. All the contributions are payable at the court meetings which are held at the registered office of the society, in the city of Dublin, under rule 13, section 7.

Mr. E. H. Ennis *contra*. The fact that this money was due is not and was not denied, and, therefore, there is no "dispute" within the meaning of the 22nd section of the 38 & 39 Vic., c. 60. Counsel referred to *Re* The United Patriots' National Benefit Society *v.* Holt, 4 Q.B. Div. 29. Gallaghan's case, 2 Law Reports, Com. Pleas. In *re* Golding's Arbitration, 64 Law Times, new series, 775.

Mr. J. E. Condon, in reply, referred to the several cases before cited, and called attention to the rule of the society that the contributions were payable at the court meetings.

Harrison, J: I am of opinion that the conditional order should be made absolute on the ground that the 22nd section of the statute, 38 & 39 Vic., c. 60, applies to the matters which were in controversy before the magistrates.

By section 22 of that Act it is provided that every dispute between "a member . . . . and the society or an officer thereof . . . . shall be decided in manner directed by the rules of the society, and the decision so made shall be binding and conclusive upon all parties without appeal, and shall not be removable into any court of law or restrainable by injunction, and application for the enforcement thereof may be made to the County Court." Now, in the present case, the rules of this society do provide for a settlement of all disputes. (His lordship read rule 12, section 7, of the society's rules and continued) and, therefore, there was no jurisdiction in the magistrates to adjudicate in the matter. Nor can it be contended that this case is exemplified from the 22nd section (to which I have referred) by the operation of the 30th section of the same Act, inasmuch as no contributions to this society were collected at a distance of 10 miles from the central office. As Mr. Condon pointed out, all payments of contributions are required to be made to the secretary at a meeting of the society under the 7th section of rule 13. Therefore the conditional order must be made absolute, but as there seems to have been a practice before the divisional magistrates to adjudicate upon these cases, our order is that each party shall abide his own cost.

O'Brien and Gibson, J.J., concurred.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 68.

CASE 208.

LEEDS COUNTY COURT.
1879.
Oct. 17.

CAHILL *v.* EUSTACE.

Friendly Societies Act, 1875 (38 & 39 *Vic., cap.* 60), *secs.* 22-30—*Claim for sick pay—Dispute—Rules—Arbitration—Non-jurisdiction plea sustained.*

A case of much interest to friendly societies—(being the first of the kind since the passing last session of the Act to declare the true meaning of section 30 of the Friendly Societies Act, 1875)—came before the judge of the Leeds County Court (Serjeant Tindal Atkinson) on Friday, the 17th October, 1879. Michael Cahill, a member of the Albion Lodge of the British United Order of Oddfellows, held at the Star and Garter, Calls, sued Mr. William Eustace, the secretary, for the sum of 16s. 6d., alleged to be due as sick pay. The secretary refused Cahill a check, on the ground that he had not received a certificate from Dr. Heald, the medical officer of the lodge, though plaintiff had produced one from Dr. Harral. As soon as the case came on the defendant challenged the jurisdiction of the court, pointing out that section 22 of the Friendly Societies Act, 1875, gave duly registered lodges power to settle their own disputes, in accordance with the rules of the society, and that the decision so given was binding and conclusive on all parties, without appeal. A somewhat similar case formerly occupied the court, and the judge had decided that section 30 of the Act of 1875 invested him with power to adjudicate. The decision then given having caused considerable dissatisfaction and much controversy amongst members of friendly societies, a deputation waited upon the Government, and last session an

amended Act to declare the true meaning of section 30 of the Act of 1875 was passed. It states that—

Section 30 of the Friendly Societies Act, 1875, applies only to such friendly societies, whether registered or unregistered, and industrial assurance companies, as receive contributions by means of collectors at a greater distance than ten miles from the registered office or principal place of business of the society or company.

His Honour asked Cahill, the plaintiff, if he had made written application, according to the rules of the lodge, for his case to be referred to the arbitration committee; and it appearing that he had not done so, his Honour said that if he had applied according to the rules of the society, and the committee had not, at the end of forty days, taken into consideration and decided upon his case, then plaintiff might have come before the court, and he could have adjudicated. If he was to adjudicate then, the lodge would go before the Court of Queen's Bench and obtain a prohibition against him. They could, however, settle their disputes better according to their own rules than in bringing them before a court.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 209.

WARRINGTON COUNTY COURT.
1879.
October 29.

GOODWIN *v.* ECKERSLEY.

Friendly Society—Sick Pay—Claim for—Dispute—Hearing within 40 *days—Jurisdiction—Plaintiff non-suited.*

At the Warrington County Court, on Thursday, the 29th October, 1879, before Mr. W. Wynne Foulkes, judge, an action was brought by John Goodwin, labourer, Sankey Cottages, Earlstown, against John Eckersley, storekeeper at the Sankey Sugar Works, and secretary of the Loyal Viaduct Lodge (No. 2,686), of the Independent Order of Oddfellows, M.U., in the Ashton-in-Makerfield District. The plaintiff claimed to recover twelve weeks' sick pay, at the rate of 10s. per week, from the 19th June to the 11th September, 1879.—Mr. Alfred Harrison appeared for the plaintiff, and Mr. T. J. Ridgway for the defendant.

Mr. Ridgway, at the commencement, took a technical objection to the form in which the bill of particulars had been issued. He contended that in framing his particulars the plaintiff had not complied with the directions laid down in order 35, rule 4, of the County Court rules; or with sub-section 2, section 21, of the Friendly Societies Act, 1875. Mr. Ridgway read these sections at length.

His Honour said that as the contention of Mr. Ridgway merely referred to an omission in the wording of the particulars, it was in his power to make the amendment.

Mr. Ridgway then referred to order 35, rule 5, of the County Court rules, and argued that the plaintiff should state clearly to what the

dispute referred, and what relief he claimed. Another section said that where the rules of the society contained no directions as to disputes, and where no decision was made by the society within 40 days, then the person or member making a claim might apply to the County Court in his district to decide the matter in dispute.

His Honour said that the rules 4 and 5 evidently intended cases in dispute to be "referred." The wording was "a case may be referred," it did not say an action might be brought.

Mr. Ridgway contended that the Friendly Societies Act only gave his Honour jurisdiction if certain things had been done—amongst others, if the plaintiff had shown the matter in dispute and what relief he claimed —and as that had not been done, he thought the plaintiff had no right there.

His Honour: What would you have him do?

Mr. Ridgway said the plaintiff ought to have shown on the face of the particulars that his Honour had jurisdiction to entertain the claim.

Mr. Harrison contended that the action was properly brought by virtue of section 3 of the Friendly Societies Act; he did not think Mr. Ridgway's contention would apply at all. That was a mere ordinary action for the recovery of sick pay. The dispute, so far as the society was concerned, was their reason for non-payment. Plaintiff sent in his claim for the amount, and according to the rules the society was bound to come to a decision within 40 days.

His Honour: Do you say this action is brought in consequence of the case having been referred?

Mr. Harrison: I say that I have come here to recover £6 by virtue of it being a common debt.

His Honour said he understood Mr. Ridgway to say that the statement of particulars ought to have shown whether there was any jurisdiction, and how that jurisdiction arose.

Mr. Harrison said he did not ask the court to decide on any dispute which might exist, but whether the money was really owing. His client sent in his claim, and as the lodge did not come to a decision within 40 days, then, he argued, the matter assumed the same aspect as an ordinary debt, and could be sued for in the County Court. The society had given no reason to his client for refusing him payment.

Mr. Ridgway said the plaintiff claimed to recover the money which was due for a period extending from June to September 19th. As forty days had not elapsed since the 19th of September, he held that the plaintiff was entirely out of court.

Mr. Harrison said that on the 19th of June the plaintiff went to Newton races, and returned to Earlstown by rail, arriving there about 8-15 in the evening. He was with two or three friends, and on the platform some person—a racing man, he believed—commenced to quarrel with the plaintiff, and without any provocation knocked him on the line and broke his collar bone. He should prove that the plaintiff was sober, and was not the aggressor; and as he was in full benefit at the

time the accident happened, he was entitled to receive sick pay for the time he was ill. Shortly after the accident occurred he sent in his claim to the society, and on the 12th July a meeting of the lodge was held, at which it was determined not to pay the claim. They did not assign any particular reason; and, as the plaintiff was dissatisfied with this, he called upon them to call a summoned meeting, according to the rules, but this they refused to do. Plaintiff then appealed to the district meeting. Mr. Harrison then read a number of extracts from the rules, and said he contended that no decision had been given within 40 days—dating from the 19th of June.

His Honour: They decided not to pay.

Mr. Harrison said he could show that on the 23rd July there was a meeting, and the plaintiff had a majority of one in favour of allowing him sick pay; but he did not get it, and he then appealed in the manner laid down in the rules. At the district meeting the motion was referred back to the lodge, but the lodge had not come to any decision; and it was only on the 16th of October—after the action had been commenced—that the plaintiff received a notice to the effect that the officers charged him with fighting and disorderly conduct, and giving notice that his case would be heard on the 1st of November, when he could attend and give evidence if he thought proper.

His Honour said that from the statement of Mr. Harrison, he thought his client was quite out of court. An appeal was made, and the district lodge, on the 27th September, referred the matter back to the lodge, and there was no doubt that the law meant that 40 days should date from that reference. They could not limit an appeal to any number of days. The rules said that if the lodge did not come to a decision within 40 days such an action might be taken; but the lodge did come to a decision, as they decided not to pay and they were not bound to state any reason why. Then the plaintiff appealed, the matter was referred back to the lodge again, and it was clear that another 40 days was intended to be allowed from the date when the case was again referrred to the lodge—viz., from the 27th September. The lodge had decided to hear the case on the 1st of November, so it was clear that the action was premature. The plaintiff was therefore nonsuited.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 68.

CASE 210.

THE JUSTICES OF NEWPORT.
1879.
Aug. 25.

WILLIAMS *v.* PERKES.

Friendly Societies Act, 1875 (38 & 39 *Vic., cap.* 60), *sec.* 22—*Dispute—Sick pay—Rules—Plea of non-jurisdiction sustained.*

At Newport, on Monday, the 25th August last, Alfred Henry Perkes, secretary of the Trefdith Castle Lodge of Oddfellows, M.U., held at the Ship and Pilot Inn, was summoned to show cause why he should not pay £31 6s. 4d. sick money to Edward Williams, a member. Mr. David appeared for the complainant, and Mr. G. H. Llewellyn for the

defendant. When the case was called on the clerk advised the Bench that they had no jurisdiction. Complainant must first exhaust all the means which the rules of the Order provided before coming to this court. Mr. David relied upon a case decided last December in one of the superior courts, *Ex parte* United Patriots Benefit Society. That decision was held to be anomalous in the interest of friendly societies, and as there had evidently been an omission in the Friendly Societies Act, a short Act was passed last May supplying that omission. The Bench, acting on the advice of their clerk, dismissed the summons on the ground that they had no jurisdiction.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 211.

YORK COUNTY COURT. 1880. *March* 2.

LAYCOCK *v.* PILMOOR.

Friendly society—Claim for funeral money—Dispute —Rules—Plaintiff nonsuited.

At the York County Court, held on Tuesday, March 2nd, 1880, before Mr. E. R. Turner, Mrs. Laycock, the widow of Mr. Francis Laycock, sued Mr. Pilmoor, the secretary of the Loyal Victoria Lodge, York District of the Independent Order of Oddfellows, Manchester Unity, Friendly Society, for £10, which she claimed due to her on the death of her husband, formerly a member of this society. Mr. Waddington, on behalf of the plaintiff, applied for an adjournment of the case on the ground that the plaintiff could not then pay the court fees. Mr. Crumbie, who appeared for the defendant, stated that he left the matter in the hands of the court, but it was only fair to the plaintiff to say that he had just pointed out to Mr. Waddington the fact that the court had no jurisdiction in this matter, in consequence of a statute of last session and a modern case which took away the jurisdiction of County County Judges in disputes of this nature, and that if the case was adjourned and the plaintiff did pay the fees he was afraid she would derive no benefit. The judge intimated to Mr. Waddington that he believed Mr. Crumbie's statement was correct, and that he had now no jurisdiction in matters of this description, and suggested that the plaintiff had better take a nonsuit if the defendant did not ask for costs. Mr. Crumbie stated that defendant did not ask for costs, whereupon the plaintiff was nonsuited.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 212.

AYLESBURY COUNTY COURT.

WOOLSEY *v.* WITHAM.

Friendly Society—Sick Pay—Claim for—Rules—Dispute—Arbitration—Plea of non-jurisdiction allowed.

At the Aylesbury County Court, Norfolk, before E. P. Price, Esq., judge, Alfred Woolsey, farmer, Aylsham, a member of the Loyal

Suffield Lodge, of the Manchester Unity, sued that lodge through its secretary, Stephen Witham, for the sum of £5, ten weeks' sick pay, due between February 10th and April 20th last. The secretary appeared as representative of the lodge, which is held at the Horse Shoes Inn, Alby, to defend the action. It was admitted that plaintiff was a member of the lodge, but it was pleaded, as a bar to his recovering the amount claimed, that he had not complied with the rules of the society, as he should have appealed, if he was aggrieved, to the district in the first instance, and afterwards to the board of directors. His Honour elicited from the secretary that plaintiff had been in receipt of sick pay, that he had been paid £12 by the lodge; that, as he was not acting in conformity with the rules, he was summoned to attend a lodge meeting, and that failing to do so, he was fined 5s. and his sick pay stopped. Plaintiff stated that he was never informed that he was fined for transgression of the rules of the Order. He could not attend the lodge meeting to which he was summoned because he was unable to get out of bed at the time. He had been 33 years in the lodge, and he considered he had been harshly treated. His Honour asked if it was a rule of lodges to fine a man in his absence without his being heard; and while the rule plaintiff transgressed was in being from home while in receipt of sick pay beyond a certain hour in the evening? The secretary replied that the plaintiff transgressed the rules by being in a public-house one evening in February beyond the time at which he ought to have been at home. Plaintiff denied that he had ever infringed the rules of the Order. His Honour (who had been referred by the secretary to the rules of the Order, which pointed out that provision was made for the settlement of disputes by arbitration) said: Although disputes may be settled in that way, yet the Act of Parliament provides that the County Court has jurisdiction. I was not aware of it when I decided a case the other day. But the Act of Parliament has been brought to my notice by Mr. Scott. It was decided at first, under an old Act of Parliament, that a County Court had no jurisdiction; but since then it had been held that the provisions of section 30, sub-section 10, of the Friendly Societies Act apply to all friendly societies. It would appear that a sub-section of the 27th section of the old Act is thereby virtually repealed, and that although societies by rules provide for the settlement of disputes by arbitration or otherwise, yet County Courts or courts of summary jurisdiction may settle such disputes provided by the Act. It would, therefore, be well, his Honour continued, for solicitors to these societies to look to the law, when they would see that, although there was a provision for arbitration in the general Act, yet the County Court had jurisdiction. The surgeon (Mr. Little) having proved that plaintiff had been long suffering from chronic inflammation of the bowels, so that he could not have attended the meeting of the lodge to which he was summoned, the secretary putting in the minute of the lodge setting forth the circumstances under which plaintiff was fined and his sick pay stopped. Plaintiff handed in some correspondence which had passed relative to the sick pay due to him, and also the surgeon's certificates as to being in a condition to entitle him to it; but the secretary remarked that the certificates in question, which related to the ten weeks' sick pay sued for, had never been put before the sick steward, as provided by the rules. Plaintiff stated that he sent them to the lodge by Bro. Sistern, who was not in attendance. His Honour was shown the rule, and elicited the fact that neither the plaintiff nor the secretary could show the certificates had been placed before the sick steward. The judge (to the secretary): The lodge suspended plaintiff's sick pay principally on

account of it being stated that he was out drinking? The secretary: Yes. The judge: And then you gave him notice to attend and clear his character as to that? The secretary: Yes. The judge: And he did not? The secretary: No. The judge: After that, if he was entitled to sick pay, he ought to have sent the certificates to the sick stewards? The secretary: Yes. The judge: And the sick steward is not here? The secretary: No. The judge: How do you know he never received them? The secretary: Because I have his word that he did not. The judge: I cannot take your word. You cannot prove it, and he is not in a position to show it; consequently, you must have the sick steward here to declare that he has never received the certificates. The case was adjourned until the October court, for the attendance of the necessary witnesses. In justice to the plaintiff, it should be stated that the secretary admitted it was only once that plaintiff was heard to have been at a public-house, and that the secretary stated the fact to the lodge. The judge, in adjourning the case, expressed his opinion that plaintiff ought not to have been fined behind his back. That was not a just thing. At an adjourned meeting on October 25th, his Honour delivered judgment. He expressed his satisfaction at the able manner the arguments had been conducted on behalf of both parties, but looking at all that had been adduced, came to the conclusion that, notwithstanding the decision of the superior court referred to, the statute of 42 Vic., c. 9, deprived the court of jurisdiction to hear the case. His Honour asked if there were any friendly societies that received contributions through collectors, and Mr. Daly having replied that he knew of none, Mr. Linay again suggested that the secretary and treasurer of the lodge were collectors. His Honour said it certainly had not been proved that the society had collectors. Mr. Linay asked if his Honour would give him leave to appeal on the decision, should it be desired? His Honour said he found it a fact that the society did not get its contributions by means of collectors, and he did not see how he could grant leave for appeal on any point of law. Mr. Daly said the action was only fought in the interest of the Order, and he should not ask for costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 213.

BRIDPORT COUNTY COURT. 1885. *Feb.* 18. *Before* TINDAL ATKINSON, ESQ.

WHITE *v.* HUSSEY.

Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap.* 60), *sec.* 22 — *Claim for Sick Pay — Expelled member—Jurisdiction objected to—Rules—Arbitration—Objection sustained.*

Thomas White, labourer, East Street, Bridport, sued Alfred Hussey, secretary of the Great Western (Bridport) Lodge of the Independent Order of Oddfellows, to recover the sum of £6 10s., being 26 weeks' sick pay at 5s. per week, from August 23rd, 1884, to February 14th, 1885, to which he claimed to be entitled as a member of the society. Mr. F. W. Gundry appeared for the plaintiff, and Mr. R. Tucker, jun. for the defendant. Mr. Tucker, it seemed, had served a notice of objection to the judge's jurisdiction, and, in reply to his Honour, said his objection

was that under rule 29 of the Great Western Lodge of Oddfellows, to which the disputing parties belonged, it was laid down that in case of any dispute between a member of the society and the society itself, a decision made at a summoned meeting of the lodge should be binding and conclusive upon all parties, unless appealed against to the arbitration of the district within three months after the date on which the decision was given. The decision of the district might also, within three months of the time when it was given, be referred to the arbitration of the directors of the Order, by either party concerned, and their decision should be binding and conclusive upon all parties without any further appeal. The judge said the County Court had got no jurisdiction in these cases, unless after a certain number of days the lodge did not take action on any matter brought before them. Mr. Tucker said it was for the member to take action, and not the society. The judge: If he applies to you to decide a matter between you, and you don't act upon that, then the County Court is seized. Mr. Tucker said there had been no application made. Further than that, section 22 of the Friendly Societies Act, 1875, said after a dispute between a member and the society should have been brought before the society, it should be decided in the manner directed by the rules of the society, and the decision so made should be binding on all parties without appeal, and should not be removable into a court of law or restrainable by injunction. The judge: That is so; but if you refuse to follow out the machinery which you have made for yourselves, in these rules there is a section which I cannot put my hand upon just now. Mr. Gundry said he had the section at hand and a case upon it, which appeared in the 4th volume of the Law Reports, Q.B.D., 29, which he handed to his Honour.

The parties, he held, were not bound to adhere to the course which the rules pointed out, but could go to a court if they felt themselves aggrieved. The judge: A court of summary jurisdiction. Mr. Gundry: That is a magistrate's court. We have the choice of jurisdiction between a magistrate's court and the County. The judge, quoting from the statute, said where any decision was not made in a dispute within 40 days after the application to the society for reference under the rules, an application ought to be made either to the County Court or a court of summary jurisdiction which might hear and determine the matter in dispute. Mr. Tucker said that was quite so; but since the case referred to (which was that of Alfred Holt) was decided – in December, 1878—another Act was passed in 1879, upon chapter 9 of which he relied. The judge: I shall not hold that you are bound by what I have just read. Before you can deprive me of jurisdiction you must show me that an application has been made to the society, and that for forty days they have neglected it. Mr. Tucker: We have had no application at all from the member. The judge: I decide against you on that. Mr. Tucker: Then I ask for a case. The judge: I shall grant no case in a matter of this sort. I am not going to pit this man (plaintiff) against a wealthy and powerful society; not at all. Thomas White, the plaintiff was then called. He said he joined the Great Western Lodge of Oddfellows on the 21st of February, 1876, and received from the officer of the lodge the book produced (rules). He continued to pay up his subscriptions to the society, and remained a member for nine years—up to the 18th of last August. He had been unfortunately afflicted with paralysis, which set in three years ago the 21st of last May. In consequence of that he was unable to work. He applied to the society for relief, and he received 10s. per week for the

first six months and 7s. 6d. for the next six months. That was what he was entitled to, and 5s. per week after that. After the lodge had been paying him the latter sum for some little time he went to the lodge meeting on one occasion and asked permission to work when he could get a job, in addition to the money which was allowed to him. The lodge granted him the permission he asked for, and still continued to allow him the 5s. a week. That went on from last June until the 18th of August, when they called a summoned meeting according to the rules, when they took into consideration whether they should pension him off at so much a week for life, or whether they should expel him from the lodge. The judge to Mr. Gundry: I have no jurisdiction in the matter unless there has been an application by your client to the society to refer it to arbitration. Mr. Tucker: That's just my contention, sir. The judge: There must be a dispute and that must remain unsettled by the laches of the society before I can get jurisdiction. Mr. Tucker pointed out that after a decision there was another appeal to the directors of the Order, but in this case the plaintiff had done nothing at all in the matter. The plaintiff, continuing, said when he attended the meeting of the lodge he was not allowed inside to plead his own cause. He had a circular sent to him respecting the meeting, but no formal charge was served upon him in this matter. Mr. Tucker here put in a letter written by Mr. Gundry on the part of the plaintiff, in which it was, he said, admitted that the plaintiff had transgressed the rules of the society, but it was asked that he should be reinstated on the books on account of his poverty and unfortunate condition. The judge said that was a very proper letter for Mr. Gundry to write, which Mr. Tucker did not deny. The judge said under these circumstances it was a case for appeal under the rules of the society, and he had no jurisdiction in a case of that sort. Mr. Gundry admitted that the plaintiff had inadvertently transgressed the rules in having stopped out after hours at night. In fact he earned 6d. after eight o'clock. The plaintiff said that was when he was allowed to work. The judge: This society is a large one and has the interest of those who subscribe to it to consider, but it must not spend its funds without being authorised to do so by its rules. Mr. Gundry: But it must expel its sick members in a legal manner and according to the rules. The plaintiff, continuing, said he was expelled from the lodge; he afterwards went to the lodge and was ordered out. Mr. Tucker: He must appeal within three months. Witness: I gave notice of appeal. Mr. Tucker said neither the lodge nor the officers had had any such notice. Mr. Gundry contended that even if that had not been done a member was entitled to redress for a wrong done to him. Mr. Tucker again argued that the case of Alfred Holt, to which reference had been made, did not apply to this case because that was heard and decided in 1878, but an Act had been passed since—in 1879, which did away with section 30 of the Act of 1875, because there was some confusion about it. That section referred to friendly societies registered or unregistered, which received contributions by collectors at a distance. This society was not a collecting society, and therefore that did not apply. Nothing had been decided since that, except one case in the County Court where the same rule was held. The judge: Unless you (Mr. Gundry) can show me that there has been neglect here of 40 days upon any application of the plaintiff by appeal or otherwise, I have no jurisdiction. Mr. Gundry said that the lodge had expelled the plaintiff contrary to their rules, and had adjudicated upon the case behind his back. The judge: He should have appealed. Supposing that they had expelled him unlawfully you

were bound to pursue the rules until those who had it in their hands to decide the question between the parties had neglected for 40 days to give a decision upon it. Then you could come to me. After some further conversation, the judge, addressing Mr. Gundry, said his sympathies were with the plaintiff, but he must take care that they did not lead him wrong. After a man had subscribed to this society as a prudent precaution against illness, the society paid him up for some twelve or eighteen months and then they stopped, saying that the member had not performed some rule which he ought to have done, by which he could be expelled, and for the protection of their funds, and in discharge of their duty they expelled him. The member believed that he ought not to have been expelled. He ought to have appealed, but he did not, and he (the judge) had got no jurisdiction until the party to whom the appeal was made had failed to give a decision within 40 days. Mr. Tucker asked to be allowed to make a statement on behalf of the Oddfellows Society, because what had been said was detrimental to the society. Mr. Gundry: I have no doubt it is. Mr. Tucker observed that from what had been said it would appear that the lodge had been doing something wrong to the plaintiff. He could only say that what had been done was after repeated offences against the rules on the part of the plaintiff. He had been fined twice. Mr. Gundry denied this. Mr. Tucker said the matter had been fully brought under the plaintiff's notice. He had been guilty of the most disgraceful conduct. He had been drunk repeatedly, and had been to the lodge and insulted the officers. The plaintiff denied this. Mr. Tucker felt he was perfectly right in saying what he had done, because of the remarks which had fallen from his friend Mr. Gundry and from his Honour. The judge: I decide that I have no jurisdiction. Mr. Tucker applied for costs. The judge: No costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 214.

CHESTERFIELD COUNTY COURT.
1885.
May 13.

STOCK *v.* REVILL.

Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap.* 30), *sec.* 22—*Claim for Sick Pay—Rules—Arbitration—Omission to apply to have dispute settled by—Plea of non-jurisdiction allowed.*

In this case Frederick Stock, of Bolsover Hill Top, labourer, sued Reuben Revill and others, as trustees of the Loyal Portland Lodge of the Independent Order of Oddfellows, Manchester Unity, for £6, being the amount of sick pay to which he held, under the rules of the lodge, he was entitled. Mr. Middleton appeared for the plaintiff, and Mr. Gee for the defendants. Mr. Middleton, in opening the case, said the plaintiff had been a member of this lodge for the last twenty-four years. He had paid his contributions regularly, and had not been complained of in any shape or way. From time to time he had been ill, and had received the benefit to which, under the rules, he was entitled. Those rules provided—and this was really the ground of contention between the parties—that a sick member should receive for the first twelve weeks relief at the rate of 10s. per week, to be paid to him by the N.G.

Plaintiff had received relief under this rule during the twenty-four years he had been a member of the lodge, and in a balance sheet which Mr. Middleton produced plaintiff was shown to have received a week's contribution of 10s. last year. On October 14th the society made some new rules. His Honour: The question is one which has often been before me. Mr. Gee: Yes; we want to have it finally decided. His Honour: The question I have had before me is whether the old members were affected, or whether any vested interest was affected by the new rules. Mr. Gee: That is really the question we wish to have decided. There have been cases all over England. His Honour: I don't know whether it has been so in all cases, but in several cases I have decided that they were not affected by the new rules. Mr. Gee: There are similar decisions of other County Court judges, and also decisions going the other way. His Honour: I have heard so. Mr. Middleton said that by the new rules, which the plaintiff objected to at the time they were brought forward, it was provided that any member who had received £20 out of the funds should only be entitled to half, and not to full pay, and the full pay was reduced to 9s. per week. In August last the plaintiff was paid at the rate of 10s. per week, as he always had been. On the 20th of January, in the present year, he became ill, and had been ill ever since. He had paid his contributions up to the present time, and was not at all in arrears. He delivered the usual notices, doctor's certificate, etc., and then he was offered 4s. 6d. per week, which he was told was all that he was entitled to under the new rules. Plaintiff contended that he was entitled to 10s. per week, as provided by rule 24. Plaintiff said he resided at Bolsover Hill Top, and was a labourer. He had been a member of this lodge twenty-four years last April. He had always paid his contributions, and was "financial" to-day. There were some rules of the society when he joined, certified in March, 1864. During the last twenty-four years he had been ill from time to time, and had received sick pay on several occasions on the scale of 10s. per week, according to rule 24. The last occasion when he received relief under this scale was in October last year. Up to that time no suggestion had been made that he was not entitled to 10s. per week. He "declared on" on the 20th of January in the present year. He took the necessary notices to the N.G., the officer who had to pay. He brought him 4s. 6d., and refused to pay him any more. Witness knew that some new rules were made in October, 1864. He was present in the lodge when they came on for discussion; so also was the defendant. Notice of the alteration of the rules was sent round to the members, but not to all of them. At the meeting where the alteration was discussed witness and others voted against it, but the new rules were passed. He did not see the new rules before they were printed. By the judge: The alteration was explained to the meeting. Examination continued: He refused to take the 4s. 6d., and subsequently went to the lodge to have the matter settled. He was then told that he would not get any more; and if he would not take 4s. 6d. he must get the rest how he could and when he could. He had since paid his contributions and was not now in arrears. Cross-examined: He had perhaps received £50 in sick contributions. He was not present at a meeting on June 16, 1883, when it was considered what steps should be taken to check the downward tendency of the lodge. He was not a member of the committee appointed for that purpose. He was told, when he went to complain of the 4s. 6d., that the rules would not allow a larger amount. He knew the working of the society very well, although he had not attended all the meetings. The judge: It does not

matter; a member is supposed to know the rules. Examination continued: He knew that under rule 3, disputes arising could be settled under the general rules by arbitration. He did not take any steps to refer the matter to arbitration. Mr. Gee: Why didn't you? Witness: I thought it could be settled without arbitration, the same as others had been settled. His Honour: That is one of the points constantly occurring in these matters. Mr. Middleton: Yes, that will be included in the other point, because the rule read is a rule made in October of last year. It cannot be put in. His Honour (to Mr. Gee): You must read it from the previous rule. Mr. Gee: You get exactly the same words in the rules prior to 1884 about disputes being referred to arbitration. The wording of the rules is almost identical. His Honour: You say that the County Court has no jurisdiction, and it ought to be settled by arbitration under the rules. Mr. Gee: That is it exactly. It was a point I was going to raise. His Honour: You might as well raise it now. Mr. Gee: I think so. Mr. Middleton: Then perhaps your Honour will deal with it. Mr. Gee: I raise a point of jurisdiction now. Mr. Middleton said that first of all the objection to the jurisdiction of this court in a case where there were rules providing for arbitration was under the Friendly Societies Act of 1875. This was an Act passed some 13 years after the rule under which the plaintiff claimed and after the plaintiff became a member of this society. He held that the Act did not apply to these old rules, because in the repeal of these Acts there was a special provision protecting anything that had been done by repealed statutes, and so on. His Honour: The Act of Parliament says that any disputes which have not been arranged in a particular way may be decided by the County Court. Mr. Middleton said he held not only that the Act of 1875 could not affect these old rules, but that there had been a request for a reference in this matter. When plaintiff was offered 4s. 6d., he went to the lodge meeting, as he said, to have the matter settled, and he asked the reason why the money to which he was entitled was withheld. The chairman replied that he had been instructed to give him that amount and no more. He was told that he would only get 4s. 6d., and that he must get any further sum where he could and how he could. His Honour: But you did nothing about it; you did not say it was to be settled by arbitration. Mr. Middleton: The rules say that in the case of any dispute not settled within 40 days, the member or person aggrieved may apply to the County Court. His Honour: The rules provide for arbitration, and there was no application for a reference under the rules. Mr. Middleton said he held that in effect there was an application, and he asked his Honour not to construe too strictly the requirements of the rules in this respect. He submitted that the fact that the plaintiff, after refusing the 4s. 6d. from the N.G., went to the lodge meeting and asked to have the matter decided, was in effect an application for arbitration under the rules. It was no fault of the plaintiff that the lodge, instead of having the matter arbitrated, told him they would not pay more than 4s. 6d., and that if he wanted any more he must get it when he could and how he could. He held that the plaintiff had complied with the spirit of the rules and of the Act of Parliament, and that when he went to the meeting and asked to have the matter settled, he asked in reality to have it settled according to the rules of the society—that was by arbitration. His Honour: He has already said that he did not apply for a reference, because he hoped to get it settled as others had got it settled. There was no application for a reference. He thought perhaps they would give him the same terms as they had given others. Mr. Gee said that in order to proceed to

arbitration there were several things to be done. First of all there must be a summoned lodge meeting, in order that all the members might be present. The plaintiff said the lodge meeting to which he went was a casual one, and there was a poor attendance. The lodge was not a summoned one. His Honour: There is nothing in that; he went to the lodge. Mr. Gee: It is for him, if he has a complaint, to initiate proceedings, but he has not done so, and I say the jurisdiction of the court is ousted. The rules provide for arbitration, which was never adopted, and therefore I contend the court has no jurisdiction. His Honour: A case came before me in another part of this circuit, and was argued at great length by Mr. Tindal Atkinson. There was a point about not collecting within 10 miles. I don't know whether you refer to that. Mr. Gee: No, we do not come within that section at all. It is a different thing altogether. That refers to the Prudential and other similar societies. His Honour: If they had received contributions beyond a certain distance, then the County Court has independent jurisdiction, but in this case the question is not raised. Mr. Middleton: No, I cannot allege that. His Honour said that being so he was of opinion that the Act could not be construed in the loose way suggested by Mr. Middleton, that it was an important section, under which alone the County Court could entertain the subject in dispute. Formerly the County Court had no jurisdiction; then by an Act passed in 1875 under certain conditions the County Courts had jurisdiction to settle disputes between members and the committee of a society. But before a County Court could have jurisdiction they must see that the proper steps had been clearly and plainly taken. The Act provided for the jurisdiction of County Courts in cases where the rules contained no directions as to dispute. This was not the case in the present action, because there were rules and directions as to all disputes, namely, that they should be settled by arbitration. An important part of the section said, "or when no decision has been made in the dispute within 40 days after application to the society for reference." Now, had there been any application made in this case for a reference under the rules? It was clear to him that there was none whatever. The plaintiff distinctly said that he had not made any application for a reference, and he gave his reason, because he hoped it would be settled as others had been settled, namely, privately. Therefore the foundation for the jurisdiction of the County Court had not been laid. He could not entertain it, and declined to do so.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 215.

TODMORDEN COUNTY COURT, 1891. *Feb.* 13. *Before* JUDGE CADMAN.

BARKER *v.* PRUDENCE OF THE VALE LODGE, M.U.I.O.O.F.

Friendly Society—Claim for sick pay—Alleged special contract—Rules—Expulsion—Neglect to appeal to proper tribunal—Plea of non-jurisdiction sustained.

In this case Joseph Barker, Albert Terrace, Todmorden, brought an action to recover £8 10s. 4d., which he claimed to be due to him as sick

benefit from the Prudence of the Vale Lodge of Oddfellows, Manchester Unity. Mr. J. A. Ingham, jun., solicitor, appeared in support of the claim, and Mr. J. E. Craven, solicitor, defended.

Mr. Ingham said this was a claim by a member of a friendly society to recover "substituted sick pay" which was alleged to be due. Plaintiff joined the society in 1838, when he was in his 27th year, and continued to be a law-abiding member until May, 1882. At that time he gave up his work at a mill owing to an organic disease from which he was suffering, and in June or July of the following year he made a written contract with the society, under which, instead of receiving ordinary sick pay according to the rules, he was to receive a sum of 3s. 6d. per week, and to be at liberty to follow any light employment which he could undertake. The ordinary sick pay under the rules was 7s. per week for the first six months, 5s. per week for the second six months, and 4s. per week afterwards, until a medical man certified that the member was free from organic disease and able to resume his employment. Prior to the time of the contract he received sick pay under the rules. The society afterwards continued to pay under the contract until September, 1888, and then they refused to pay any longer; thus, as he (Mr. Ingham) submitted, breaking the contract. By the rules it was provided that any dispute between the society and a member should be decided by arbitration, but as he (Mr. Ingham) was proceeding under the written contract, and not under the rules, he had elected to bring this matter before the court for adjudication. What the defence could be he was unable to glean. After the society broke the contract, the plaintiff continued a member, and drew ordinary sick pay under the rule—26 weeks at 7s.; and then about three weeks at reduced pay, when the lodge suspended him for breaking the rules, and shortly afterwards they expelled him.

Mr. Craven: He then appealed to what was called the "District"—a sort of provincial council of the Order, and from the decision of that body he had a further right of appeal, if he had chosen, to the directors.

His Honour asked if Mr. Craven suggested that plaintiff had now appealed to the wrong tribunal.

Mr. Craven said that was so. Why Mr. Ingham should make the distinction between what he chose to call the contract and the rules, he (Mr. Craven) did not know. He had an answer on the contract itself, if it should be held to be a contract, but the point he had first to submit was that the court had no jurisdiction. It was really an action for sick pay supposed to have accrued after the date of the plaintiff's expulsion.

His Honour said until by some means the plaintiff was replaced in the lodge he did not know how he could claim.

Mr. Craven said that apart from this point, he had abundance of evidence to show that if plaintiff was a member, it was a matter that must be dealt with by the Order. With regard to the arrangement which Mr. Ingham called a contract, it was true it was made and acted upon for some years, but eventually it was found to be contrary to the laws and constitution of the Order, and was rescinded so that the lodge might bring itself into harmony with the general law. The lodge was only an assurance against sickness and death, and not against old age. It was, he said, very desirable that old men like the plaintiff should

have some means of subsistence, but he had not contracted for that, nor assured against it with the lodge. The payments of the society were not framed to permit of granting pensions to old members. The lodge had also clearly power to rescind the arrangement made, for it was expressly made "until further notice," and before it was rescinded the plaintiff had notice given to him. The effect of rescinding it was to resolve plaintiff back to the position he occupied prior to the arrangement—*i.e.*, if he was ill he would have been entitled to go on receiving 4s. per week, subject to the restrictions laid down by the rules. Very cunningly, however, he threw himself off the funds for six months, and then became entitled to full pay. He received 7s. a week for six months, and then, owing to some breach of the rules and defiance of his brethren, he was rebuked by the lodge, then suspended, and ultimately expelled. He appealed to the district meeting against the expulsion, but they did not upset the decision. After hearing the plaintiff, they resolved "that in the opinion of the district meeting Bro. Joseph Barker has been in error, and has acted contrary to the rules of his lodge;" but the resolution went on to state that "we think the sentence of expulsion was too severe, and would advise his reinstatement if he will express his willingness to abide by the rules of the lodge, and be placed on the same footing as regards payment as at the time of his expulsion." Plaintiff, however, never made any such submission. He neither applied to be reinstated nor tendered his subscriptions after his appeal to the district meeting. Mr. Craven then quoted a reported case, Regina *v.* Catley (19 L.R., Q.B.D., 509), showing that a County Court had no jurisdiction in a case of this character, unless the Order refused to decide the matter in dispute, or delayed doing so for a period of 40 days. In such a case only could the court intervene between a member and a society.

Mr. Ingham said according to his instructions, the appeal to the district meeting was a farce, and the decision was given in the plaintiff's absence.

Mr. Craven said the plaintiff was heard on his complaint, and then retired for the district meeting to confer. Plaintiff might have returned to hear the decision if he had chosen.

Mr. Ingham said he was never sent for to hear it, though he remained in the building all the time.

Mr. Craven pointed out that the Grand Rules of the Order (75 sub-s. 6 and 7 *b*) provided that the parties interested be permitted to hear the decision, and that a copy can be had on application.

Mr. Ingham said plaintiff wrote to the directors in Manchester immediately after receiving it, and his letter was returned to him with a refusal to consider it, simply on the technical point that it should have been sent through the Corresponding Secretary for the Todmorden District, instead of direct by the plaintiff himself. He (Mr. Ingham) contended that all the proceedings were *ultra vires.*

His Honour held that it was a matter over which he had no jurisdiction. The whole tribunal for settling the dispute was amongst themselves. Up to a certain point the plaintiff availed himself of the means provided for settling it, and he was bound by the resolution.

Mr. Ingham pointed out that there were other members under the same rules as plaintiff, but he seemed to have been made the scapegoat for the rest.

Mr. Craven denied that plaintiff had been treated in an exceptional manner.

His Honour said the plaintiff had not chosen to exhaust the remedies provided by the rules. Besides, as to the agreement of contract, he must have agreed to that being varied, or else why did he throw himself off for six months, and then throw on the funds and receive full pay?

Mr. Ingham said it was a question whether the period had not expired which was specified in the rules as to the time within which an appeal should have been made.

His Honour said if that was so, it was plaintiff's own fault. If he could help the man he would, but what had happened was entirely his own fault, and nobody's else.

Case struck out on the ground that the court had no jurisdiction.

Mr. Ingham asked that plaintiff might be allowed his costs, but his Honour refused. Each party must pay their own.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 216.

TUNSTALL COUNTY COURT. 1891. *May* 1. *Before* JUDGE JORDAN.

HEATH *v.* LOYAL OAK LODGE, M.U.I.O.O.F.

Friendly Society—Claim for Sick Pay—Rules—Arbitration—Expelled Member—Non-jurisdiction plea sustained.

William Heath, formerly a miner, of Harriseahead, sued the Royal Oak Lodge, No. 4,565, of the Manchester Unity of the Independent Order of Oddfellows, for £4 3s. 10d. sick pay, and also sought for an order reinstating him as a member. Mr. Ramsdale appeared for the plaintiff, and Mr. Edward Hollinshead appeared for the defendants. The case had been put back a month in order that the trustees might be summoned as defendants along with the secretary. The monetary claim consisted of sick pay from October 9th, 1890, to March 14th, 1891, at 4s. per week, £4 8s., less contributions at 1s. 8d. per month from January 3rd, 1891, 4s. 2d., leaving the claim of £4 3s. 10d.—Mr. Hollinshead objected to the jurisdiction of the court. The society was registered under the Friendly Societies Act of 1875, and so was the Harriseahead Branch. He objected to jurisdiction under section 22 of the Act, which provided that any dispute should be decided by the rules, without appeal or removal to a court of law.—Mr. Ramsdale said his client never had a copy of the rules, and now, because he was likely to remain ill, they wished to deprive him of benefit. He did not sue as a member, but as a person who had been expelled, and therefore the rules did not apply. He had got an award from the Court of Settlement for payment

up to January 24th, but the money had never been paid.—Mr. Hollinshead said the amount was about £3 1s. They refused to pay for any period after January 20th. They did not wish to deprive the man of the sick pay due to him.—His Honour said he hoped they did not, for he should condemn such conduct in the strongest language he could. It was monstrous if a man paid when in good health that he should be deprived of benefit when he fell ill. If they had paid the money to the man he should have thought they behaved properly.—R. C. McLaren, the secretary of the lodge, said a resolution had been passed to pay the plaintiff £3 1s. sick pay up to January 24th, but he refused to accept it unless he got his solicitor's and doctor's fees.—His Honour said he believed he had no power to try the dispute. If there had been an award in the case he had no power to try it at all. He could not override the Act of Parliament, and the only thing he could suggest was that they should pay the man what was awarded. He had no jurisdiction in the matter.—Mr. Hollinshead said the award would be paid without jurisdiction.—Mr. Ramsdale asked for an order for reinstatement as a member of the lodge.—His Honour said he did not seem to have applied to the lodge, and he must do so and offer his behindhand subscriptions. He must nonsuit the plaintiff.—Mr. Hollinshead asked for costs, but his Honour declined to order them, on the ground that the lodge ought to have tendered to the plaintiff the amount of the award.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 217.

MANCHESTER COUNTY COURT. 1891. *Sept.* 23. *Before* JUDGE RUSSELL.

DAVIS *v.* TOMLINSON.

Friendly Society—Claim by member for return of contributions alleged to be overcharged and for expenses—Non-jurisdiction plea sustained.

Charles Davis, a member of the Clutton Lodge, Beeston Castle District, sued the secretary of the lodge, Charles Tomlinson, to recover the sum of £1 11s., being, as to 15s. for alleged overcharges of contributions paid by the member, and as to 16s. for expenses incurred by the plaintiff in reference to his claim. The lodge had passed a resolution declining to pay the amount, and the member, instead of appealing against such resolution, as provided by the rules, commenced proceedings in the County Court. At the suggestion of the C.S. of the Order, who was consulted by the lodge with reference to the claim, the matter was placed in the hands of Mr. William Cobbett, solicitor, Manchester, who on the hearing of the case, took the usual statutory objection that, according to the rules of the society and section 22 of the Friendly Societies Act, 1875, the court had no jurisdiction. His Honour upheld such view, and gave judgment for the defendant, with costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 218.

DERBY COUNTY COURT. 1895. *April* 8.

FALCONER *v.* TRAVELLERS' REST LODGE, M.U.I.O.O.F.

Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap* 60), *sec.* 22—*Sick pay reduced—Dispute—Rules—Nonsuit.*

The plaintiff, an aged man, who is a framework knitter, and lives at 143, Cambridge Street, Derby, made a claim against the above mentioned Derby lodge, alleging that his sick pay had been illegally reduced.

Mr. Wykes, solicitor, appeared at the instance of the lodge to resist the claim.

The Registrar (Mr. W. B. Woodforde): The defence is a question of rule, and if heard it may dispose of the question of merits.

His Honour therefore first called upon Mr. Wykes.

Mr. Wykes said his defence was that the plaintiff's claim ought not to have been brought before the County Court at all, such disputes being otherwise provided for under the Friendly Societies Act of 1875. The dispute ought to be decided under the rules of the society.

His Honour: Do you say there is a rule making it a precedent that there shall be arbitration?

Mr. Wykes: Arbitration or request for arbitration, which had not been complied with in this case. The rules of the society laid down that when a dispute arose it should be heard by the lodge, and if desired an appeal might be made from their decision to the committee of the district, and in turn also to the Directors of the Order. Such decision when thus obtained would be conclusive and binding on all. The present claim was made on the 2nd ult., and it was refused by the lodge. Then, without any application under the rules for an appeal to a summoned meeting of the district, the defendant entered his claim in the County Court.

His Honour (to plaintiff): How can you satisfy me that you are entitled to bring this action?

The plaintiff: By the rules. Plaintiff proceeded to place before his Honour rules which he thought supported his action.

His Honour, after examining the rules, said it appeared that if a member was dissatisfied with the decision of the lodge he had next to appeal to the district.

Plaintiff contended that the rules distinctly provided that the lodge had no power to arbitrate in regard to sick benefits.

His Honour pointed out to plaintiff that the provision he (plaintiff) was alluding to was with regard to arbitrators appointed by the lodge. But the arbitrators would be different from the committee chosen under the 75th rule of the Order. His reading of the rules was that any case in regard to sick allowances might be determined by a summoned lodge.

Plaintiff said he thought that the new rules made were illegal.

His Honour: You say that under former rules you would have been entitled to 19 guineas, whereas it is said that under the new rules you are only entitled to some £15, according to the reduced scale.

Plaintiff: Yes, sir. Plaintiff went on to say that he thought the Friendly Society's Act directed that the appeal should be not to the district but to a court of justice.

His Honour said the Act of 1875 was against the plaintiff on that point.

Mr. Wykes said that if the plaintiff applied in the proper course to the district he could have his appeal heard, instead of coming to that court. It was a matter of the utmost importance to friendly societies consisting of a large number of members, that they should not be brought to the County Court when these disputes arose, and unnecessarily put to expensive proceedings.

Plaintiff: A member can bring his dispute to the County Court if his sick pay is deducted.

His Honour: I cannot see anything of that kind in the Act.

Mr. Wykes quoted a case decided by the High Court in support of his objection.

His Honour said he was afraid that the plaintiff had no case at all. He was sorry for the plaintiff, and he had done all he could to find out whether he had any case, as he (his Honour) always did in an action where any one of the parties had not the assistance of an advocate or counsel. He could not, however, find anything in the Act in support of the plaintiff's action, and in fact he had always understood that members never could bring procedings against friendly societies unless there was a refusal to entertain their claims, and then under certain circumstances cases could be brought. He must therefore nonsuit the present claim.

Plaintiff asked if he could have the case adjourned so as to further consider the matter and get legal advice?

His Honour advised the plaintiff that by doing so he would be only throwing away his money; but he would grant an adjournment if the plaintiff pressed for it.

Plaintiff ultimately said he would take his Honour's ruling.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 219.

COURT OF COMMON PLEAS. 1847. *April* 21.

ROBERTS *v.* PRICE.

Friendly Society—Election of Officers.

By the rules of a friendly society, enrolled under the 10 Geo. IV., c. 56, the power of electing a treasurer and other officers, was vested in

a committee of eleven. At a meeting of the committee, at which ten of the members only were present—the eleventh not having received notice—the defendant, the former treasurer, was removed, and the plaintiff appointed in his stead, by a majority of votes.

Held, that the election was void, although the absent committee man had, for a considerable period, ceased to attend the meetings, and had intimated an intention not to attend any more, and although the defendant himself had demanded a poll.

CASE 220.

IN CHANCERY. MASTER OF THE ROLLS. 1838. *Dec.* 21, 22.

IN THE MATTER OF THE HEANOR FRIENDLY SOCIETY.

An officer of a friendly society, entrusted with moneys of the society jointly with another person, who is a member but not an officer of the society, is not within the summary remedy provided by the 8th section of the Act 33 Geo. III., c. 54.

This was a petition presented by Matthew Wood and Benjamin Jackson, as trustees of a friendly society, which was established at Heanor, in Derbyshire, before the passing of the Act 33 Geo. III., c. 54, and which, not having conformed to the provisions of subsequent Acts of Parliament was still entitled to the benefit of that Act. The petition was presented under the 8th section of the 33 Geo. III., c. 54, for the purpose of making the respondent, Thomas Heath, who was alleged to have been the treasurer of the society, account for certain sums of money, with which, it was said, he had been entrusted.

The society had no such officers as trustees, *nominatim*. The petitioners were called stewards, and the petition, as presented, purported to be the petition of the petitioners as stewards, alleging that the stewards of the society were, in fact, the trustees; the Master of the Rolls, however, considered that he could not entertain the petition unless it purported to be the petition of the trustees. His lordship having given leave to amend, the designation of trustees was substituted for that of stewards, and, being satisfied by the affidavits, that the stewards were in fact, although not in name, the trustees, his lordship allowed the petition to proceed.

The society held all its meetings at a public-house, of which the respondent, Heath, was for some time the landlord. It was one of the society's printed rules that the landlord for the time being should be an honorary member, and should be entrusted, to a certain extent, with the society's property. Heath, in this respect, acted as his predecessors had done; but in addition to his duty as prescribed by the society's rules, it happened that a sum of £100 belonging to the society and not required for their immediate wants, was, by their direction, deposited in a banking house at Derby, in the joint names of Heath and a member of the society, named Thomas Whiteman, and to them jointly the bankers gave an accountable receipt for the amount. Twenty pounds, part of

this sum of £100, were afterwards duly drawn out for the purposes of the society, but it was now alleged that the remaining £80 had been misapplied by Heath, or with his concurrence, and the present petition was presented for the purpose of obliging him to make it good. Whiteman, however, could not be joined with him as a respondent to the petition, inasmuch as he was not an officer of the society, and therefore not within the terms of the Act of Parliament by which the summary remedy was given.

A question was raised upon the evidence, as to whether Heath could be considered as the treasurer or an officer of the society; but the Master of the Rolls was of opinion that he must be considered, at all events, an officer, if not the treasurer of the society. There was considerable conflict of testimony upon the merits of the case; Heath alleging that the £80 in question had been applied under the authority and for the purposes of the society, and the petitioners denying that any such authority had been given or that any such application had taken place, and stating, that having discovered that a particular person had, by some unlawful means, received £24, part of the £80, the society had obliged that person to give his promissory note for the amount, as the only security which could be obtained, but a security which was said to be in fact worthless.

Mr. Craig, for the petitioners, cited *Ex parte* Ashley, and *Ex parte* Ross.

Mr. Pemberton, for the respondent.

The Master of the Rolls, at the conclusion of the argument, said he considered that Heath had been, during the time in question, an officer of the society, and that he had been a person entrusted with moneys of the society; that such moneys had been misapplied by him or through his instrumentality; and that if the case was clearly within the terms by which the summary jurisdiction was given, Heath ought to be ordered to make good the whole amount, after deducting the £24 as to which the society had, in his lordship's opinion, discharged him by taking the promissory note before mentioned; his lordship however said, he had considerable doubt whether any order could be made, inasmuch as in the present instance Heath had been entrusted jointly with another person, who was not before the court upon the present occasion, and could not be brought before it, in consequence of his not being amenable to the summary jurisdiction given by the Act of Parliament. His lordship said he would consider the case.

On a subsequent day, the Master of the Rolls stated that, upon further consideration, he was satisfied that the difficulty to which he had before alluded was insuperable, and that no order could be made.

Mr. Pemberton some time afterwards applied for Heath's costs, but the Master of the Rolls refused them.

CASE 221.

SALFORD BOROUGH COURT. 1881. *July.*

REGISTRAR OF FRIENDLY SOCIETIES *v.* NODEN.

Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap.* 6), *sec.* 28 — *Quinquennial Return — Failure to supply — Conviction.*

At the Salford Borough Court, July, 1881, John Noden, the secretary, and J. L. B. Houghton and E. H. Parkinson, members of the Salford Funeral Friendly Society, were summoned before Mr. J. Cook and Mr. F. Moss for not complying with the requirements of the Friendly Societies Act, 1875, to make a quinquennial valuation of their assets. Mr. Tomkins, chief clerk in the central office of the Registrar of Friendly Societies, London, appeared in support of the information. It was stated that the society was founded in 1815, and was now very extensive, numbering about 25,000 members, with an annual income of over £5,000. The section of the Act under which the prosecution was taken allows six months at the expiration of the term of five years for the return to be made, and although this period had expired, and the society had been three times reminded of the necessity of making the return, it had not been made. Mr. Noden, one of the defendants, said it was impossible to make a valuation every five years, but Mr. Tomkins said he could not see how it was impossible when much larger societies of a similar character, such as the Royal Liver in Liverpool, had complied with the requirements of the Act. The magistrates were of opinion that the return ought to have been made, and fined the defendants £5 and costs, including 30s. for Mr. Tomkins' expenses.

N.B.— *See Friendly Societies Act*, 1896, 59 & 60, *Vic.*, *cap.* 25, *secs.* 27-28.

CASE 222.

COURT OF KING'S BENCH. 1828.

THE KING, ON THE PROSECUTION OF G. SPURGING AGAINST GILKES AND OTHERS.

An order of justices requiring the stewards of a benefit society to re-admit A. B., who had been expelled, recited that it had appeared to the justices that the rules of the society had been enrolled at the Quarter Sessions. On the trial of an indictment against the stewards for disobeying such order.

Held that the recital was not evidence of the enrolment of the rules.

CASE 223.

NISI PRIUS. LORD ELLENBOROUGH. 1814. *Friday, May* 27.

BATEY AND ANOTHER *v.* TOWNROW.

An action cannot be maintained by the trustees of a benefit society elected under new regulations, agreed to by the members, unless these regulations have been confirmed by the Quarter Sessions, although the original rules of the society were enrolled in pursuance of 33 Geo. III., c. 54.

Trover by the plaintiffs as stewards and trustees of "The United Society of Bricklayers," for the books and insignia of the society.

This was a benefit society, the rules of which had been enrolled at the Quarter Sessions, pursuant to Statute 33 Geo. III., c. 54. According to these rules, the society was to meet at four different public houses, and there were to be two stewards chosen together, who were to remain in office for six months, and then to be succeeded by two others chosen in the same manner. It was afterwards agreed to meet only at one house, and that one steward should be chosen every three months, to remain in office for six, so that there might not be two new stewards coming into office at the same time. These alterations of the rules never were submitted to the Quarter Sessions.

The books and insignia had been delivered to the defendant by two stewards chosen under the original constitution; but the plaintiffs who are now the acting stewards, had been chosen at different times, according to the new mode of election.

Mr. Garrow, A.G., contended that the plaintiffs were entitled to recover by virtue of section 11 of 33 Geo. III., c. 54, which vests the moneys, goods, chattels, and effects of these societies in the trustees for the time being.

Lord Ellenborough: The plaintiffs have no right to stand here except by this Act of Parliament, and the Act of Parliament gives them no such right, unless they be lawfully elected to the office they now fill. But it appears that they were elected contrary to law, and therefore they cannot maintain this action. The first section of the statute says, that "the rules, orders, and regulations," approved of and confirmed by the justices, "shall be binding upon all parties," and the second section, which permits an alteration or repeal of these rules, orders, and regulations, with the concurrence of three-fourths of the members, provides, that "such alteration or repeal shall be subject to the review of the justices at the General Quarter Sessions of the Peace, and shall be filed in manner therein before directed, and that no such rule, order, or regulation, shall be binding, or have any force or effect until the same shall have been agreed to, and confirmed by such justices, and filed as aforesaid."

I cannot look, therefore, at the rule for altering the mode of electing the stewards, and it is admitted that the plaintiffs were not elected according to the original rule upon this subject confirmed by the

Quarter Sessions. Therefore they are not the legal trustees of the society for the time being, and the effects sought to be recovered never vested in them.

Plaintiffs nonsuited.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 13.

CASE 224.

COUNTY COURT OF CUMBERLAND. HOLDEN AT COCKERMOUTH. 1895. *May* 6.

SCOTT *v.* BARTON.

Friendly Societies Act, 1875—*Secession—Rules—Illegality of unless Rules complied with—Injunction restraining dealing with Society's Funds.*

Mr. Ward, who appeared for the Ancient Order of Foresters' Friendly Society (the plaintiffs), said: May it please your Honour, this is an action on the equity side of your Honour's court, and your Honour may remember something of the circumstances of the case when I remind your Honour that I made an application to you in Chambers at your Kendal Court for an interim injunction to prevent the dealing with certain moneys, and for an order for substituted service upon those two defendants who are out of the jurisdiction, and your Honour made those orders, and I then to some extent explained the nature of the action. I propose now with your Honour's permission, shortly to state the facts, and then I shall have a suggestion to make, to which, perhaps, your Honour will see fit to accede, and which may save the time of the court and shorten the action. There are three sets of plaintiffs. The first set are trustees of the Ancient Order of Foresters' Friendly Society; the second set are trustees of Carlisle City District Branch of the same society; and the third set are dissentient members of Court Mulberry Tree, No. 5,994 of the said society—the court holding its meetings at the Schoolhouse, Gilcrux. Now, the defendants may be divided into two sets, namely, Barton, Monkhouse, and Brown, who, as I say, are the legal trustees of Court Mulberry Tree, they being the only trustees whose nominations have been registered. Then William Carter, Joseph White, and William Key are members of Court Mulberry Tree, who have been, *de facto*, appointed or attempted to be appointed, trustees of that society in substitution for the legal trustees.

His Honour: Who do you say; Carter, White, and Key?

Mr. Ward: Carter, White, and Key. The defendant, Robert Johnstone, is a member of Court Mulberry Tree, who has been appointed secretary, as your Honour will see hereafter, of a society which has been named Industrial Society No. 1, and the establishment of which society the plaintiffs seek to restrain. Joseph Hardisty, the remaining defendant, is the treasurer of that new society. The facts are, that the defendants, with the remaining members of Court Mulberry Tree, formed what is called a subordinate court or branch of the Ancient Order of Foresters' Friendly Society, and, as your Honour is aware (as I understand you have had considerable experience in friendly society matters), that court is an integral part of the whole society—of

the larger society—and itself is joined to and forms part of the district known as the Carlisle City District Branch of the Foresters' Society. That district takes within its purview a number of courts—twelve courts in this particular instance—and delegates from that and the other districts throughout the country and from the subordinate courts out of district form what is called the parent society or High Court. That High Court is governed—or rather its laws are carried out—by an executive council, and it has a set of trustees who are the first-named plaintiffs in this action, and who are the persons under the Act of Parliament to sue for any irregularity or breach of the law or the rules. That gives your Honour the constitution of the society. Your Honour is aware that under the rules of the court and of the district and of the parent society, the subordinate courts are subject to the rules of the district and to the parent society, and to any alterations that may be made therein from time to time and duly registered. In 1893 the Carlisle City District Branch thought it right to increase the amount of subscriptions or levies to be paid by each court to provide a Funeral Fund and for other benefits. Court Mulberry Tree dissented from that alteration of the rules, but the alteration was duly passed and registered in proper form and became binding upon Court Mulberry Tree under a rule of the court, which I will hand up to your Honour. Rule 1 of Court Mulberry Tree says that: "The whole of the objects and rules of this court shall be carried into effect in conformity with and subject to the rules of the Carlisle City District Branch of the said Order and the general laws of the Ancient Order of Foresters' Friendly Society, and the whole of the said laws of the Order and of the district, and any alteration or amendment thereof hereafter made and duly certified, shall be applicable to the members of this court, in the same manner as if the said laws, etc., were inserted in these rules." It was not competent for Court Mulberry Tree, if it did dissent from the alteration of the rules, to conduct itself in a manner other than in accordance with the altered rules. There can be no doubt about that. But Court Mulberry Tree, in defiance of the rules and laws, thought proper to pass resolutions forming itself into an independent society which was named "Industrial Society No. 1." They did not change the place of meeting, but they took with them nearly the whole of the members and the whole of the funds belonging to Court Mulberry Tree. Now, perhaps, there would not have been very much to have been said if the court had adopted the machinery provided by the Act and the rules for the severing of courts from the parent society; but they did not do that. They did something which, on the face of it, looked, as I suggest, fraudulent. They induced Thomas Barton, the first-named defendant, who was the only remaining member of the legally constituted trustees then in England, to sign a notice of withdrawal of the moneys invested in the Post Office Savings Bank, and forming the funds of the court. It is said by Barton that he was induced to do that under the false representation that only a small portion of the money was required for the immediate use of the court. On the other hand, the five defendants, White, Carter, Key, Johnstone, and Hardisty, say that that is not the fact, and that Barton knew that they wanted the whole of the money from the Post Office Savings Bank to enable them to form a new and separate society. However that may be, it will not be material for your Honour to consider it, because, as I shall tell your Honour directly, something has been done which will render that wholly unnecessary. In addition to getting that money, Court Mulberry Tree formulated a

set of rules (a copy of which I have), and had them printed. They are called "Rules of the Industrial Society No. 1, held at the Schoolroom, Gilcrux." These rules were not registered, but were printed and ready to be acted upon. Robert Johnstone, the secretary, has written to me to say they have been held in abeyance, and nothing has been done with regard to them beyond printing them. This matter did not come to the notice of the executive council of the Order until early this year. They immediately made enquiries into the facts, and they felt it necessary to institute the present action in this court, the particulars of claim in which action sets out the facts that I have mentioned to your Honour, and which claim:—First, that this court shall make a declaration that the defendants are trustees of the moneys and properties belonging to Court Mulberry Tree, set forth in the laws and rules; execution of the trusts; a declaration that the defendants are liable to pay to the High Court Trustees the moneys appropriated, divided, devoted or applied to objects contrary to, or inconsistent with, the laws of the Order; payment of the contributions and fines due or incurred by the court under the laws and rules; then an injunction to restrain the defendants from severing, or attempting to sever, the branch from the Order and district; and from carrying on the business of the branch as a separate society without complying with the laws and rules as to secession or separation; and a further injunction to prevent the defendants applying the funds for the purpose of a new society, or any purposes inconsistent with the laws; lastly, an injunction to restrain the defendants from withholding contributions and fines and committing any other breaches of trust. Following upon those injunctions, it will be necessary to ask your Honour for an account and such further relief as one might have to come to the court for. That constitutes the history of the case down to the period when the defendants were restrained by your Honour from interfering with the funds of the court until the trial of this action. They then for the first time entered into correspondence with me as solicitor for the plaintiffs. I am speaking of the five defendants other than the three first named (Barton, Monkhouse, and Brown), and they admitted that they had committed a legal wrong, and they have placed themselves in the hands of the court through me, and ask me to make a statement. In regard to these five defendants they are willing to consent to judgment in the terms which I will hand up to your Honour. They are willing that judgment shall be taken for a perpetual injunction as claimed in the particulars; and that a declaration be made that the defendants are trustees of the moneys and property belonging to Court Mulberry Tree upon the trusts applicable thereto set forth in the laws and rules: that they are liable to pay the plaintiffs the sum of £179 8s. 4d.—I should mention that the sum of £159 odd mentioned in the particulars has been increased by additions since that sum was withdrawn from the Post Office Savings Bank—a declaration that the defendants, other than Barton, Monkhouse, and Brown, are liable to pay to the Trustees of the Order the fines of £5 and 10s. a day incurred since the 21st day of October, 1893, until judgment, under general law 49, section 1, sub-section *b*. I should recall your Honour's mind to law 49, which I read to your Honour at the Kendal Court, and which says: "The account of each fund shall be kept separate and distinct, and any court appropriating any portion of the Sick and Funeral Fund for any other purposes than paying the sick and funeral allowances claimable under the rules, shall forfeit the monev so appropriated to the High Court Relief Fund, to be recovered by legal process as a penalty, and the court shall also be fined £5 and 10s. a day

until the money is paid into the said fund." The five defendants admit that they are liable in law under that general law of the Foresters' High Court. Then the judgment will declare that the defendants are liable to pay to the Order and district the contributions and fines due; and lastly an account is to be taken on the footing of the declarations, and that the defendants do pay to the plaintiffs the costs of the action, to be taxed, with liberty to apply to your Honour should it become hereafter necessary to do so. The effect is, that these five defendants admit their liability to the claim as stated in the particulars, and, on their admitting that liability, the executive council of the Order, not wishing to deal too harshly with them, have entered into terms which it is my duty to mention, though they will form no part of the judgment; that is to say: On transfer to the plaintiffs of the sum of £179 8s. 4d., now standing to the credit of these five defendants at the Cockermouth Branch of the Cumberland Union Bank, and the members and officers of the Court Mulberry Tree forthwith convening a meeting of the court to appoint, and at such meeting appointing three new trustees to take the place not only of the legal ones, but of the *de facto* illegal trustees—if I may so term them—and completing such appointment, to be notified through the Permanent Secretary of the Order in the manner prescribed by law, the plaintiffs undertake to transfer into the names of the new trustees the balance of the sum of £179 8s. 4d., after deducting thereout an agreed sum for fines, costs, and expenses; and the plaintiffs will undertake not to proceed with the accounts, and to accept such deducted sum in settlement of all moneys payable under the judgment or claimed in the action; but on failure to return the moneys (and the defendants, I should tell your Honour, have handed to me the duly endorsed deposit receipt of the Cockermouth Bank), or to carry on Court Mulberry Tree as a subordinate court of the society, subject to and in conformity with the law and rules, the judgment is to be enforced and payment of any moneys for the time being made shall be treated as on account generally of moneys due under the action. These terms have been assented to by five of the defendants, but there are three others. One of them, Barton, is now before you; but of the other two, one is in Africa and the other is in America. They are all before your Honour so far as service goes. They have been served in the manner prescribed by law, and an affidavit of the service is on the file. But they are in a different position to the other defendants, inasmuch as the defendant Barton was no more active party to the illegal transfer of these moneys beyond this—and it was rather an act of omission than commission—he signed a blank notice of withdrawal, which enabled the other defendants to get the money out of the Post Office Savings Bank. Apart from that, he has been guilty of no breach of trust or *lâches*. The other two defendants out of the jurisdiction have done nothing actively. One has written a letter to your learned registrar, in which he offers to place himself in the hands of the court; but I think the more convenient plan is that judgment should be taken against the five defendants within the jurisdiction in the terms submitted and agreed to, and that possibly the better way will be to have the action struck out as against the other three defendants. That will, probably, relieve your Honour of the necessity of going into evidence this morning, which I am entitled to submit, and on which I should ask your Honour's judgment. Your Honour is aware that this is the first case of the kind which has been instituted in the County Courts in England; and your Honour will therefore permit me to say that it is highly desirable that the greatest

publicity should be given through the medium of your Honour's court and the press to the fact, which is of general public interest, and also of the highest interest to friendly societies and the Foresters' Society in particular, that when a body of men—or persons, rather—because there may be men and women, when a body of persons come together for the purpose of creating a subordinate court or branch of a friendly society, they cannot, after once entering into the contract dissolve themselves and get rid of the contract at their own mere motion. Your Honour knows well, and I think your Honour will permit me to say for the benefit of other courts—rural courts, especially in this neighbourhood—that the courts contribute not only to the maintenance of themselves, but of the district and of the High Court. That is their liability. On the other hand, the district contributes funeral payments and other benefits to the subordinate courts; and the parent society relieves subordinate courts when in distress; and in other respects is a parent and benefactor to those courts, so that the obligation is mutual and reciprocal. You have the case of Schofield *v.* Vause, where a similar thing was dealt with in the Court of Appeal. I think your Honour will agree if, on the other hand, a subordinate court grows rich, and therefore chooses to separate itself from the parent society and the district, and as soon as it is able to walk by itself, sets itself apart from the parent society, and does so walk without following the provisions appointed by the Act and the rules for severing itself and enabling itself to walk separately, that is an evil which this court—which the law—has power to remedy and which will be, in fact, remedied; and the sooner and more widely that fact is known the better it will be for the interests of friendly societies in general and the public at large. With your Honour's permission to do that, I ask you for an order in the terms agreed upon against the five defendants, and that the action be struck out as against the remaining three.

His Honour: Yes; very well. You defendants present have heard what has been said by the learned gentleman who has addressed the court, and you are content?

The defendants assented.

His Honour: Very well. I agree with what has fallen from the lips of the learned advocate who has just addressed me. I may say that I am exceedingly obliged to him for the very clear way he has laid the case before the court, both on the former occasion and on this occasion; and I also agree with what he said, that it is of great importance that these courts or branches should know that they cannot sever themselves from the parent society without obeying the rules which they themselves are subject to. That is of great importance. Although this is the first case in County Courts, as far as I am aware, of the class that has arisen. I had a case before me at Barrow a little time ago in which a secretary had sued for his salary. I found that under the rules he was not entitled to his salary, and that case went to the court above, and my decision on that subject was confirmed. It doubly proves, if it is necessary, the very great importance of these district or branch societies, whatever they do, conforming to the rules which they themselves have agreed to conform to. They cannot do anything without conforming to the rules—they cannot take the law into their own hands. It is for mutual assistance that the branches belong to the parent society. As has been very well said by the learned gentleman who has addressed me,

when they are able to walk by themselves they can walk by themselves, but they must not walk illegally; they must walk in accordance with the law. It is very important that the widest publicity should be given to the fact that they must conform to the rules; district societies and branch societies must conform to the rules of the parent society and their own rules. If they do that they can get justice in their favour—they can get all that belongs to them. If they do not conform to these rules it may bring—as this case would have brought—ruin upon these men now before me, if it had not been for the consideration which they have received at the hands of the parent society. I make the order as prayed.

Mr. Ward: If your Honour pleases. The form of judgment will be settled by your learned registrar in chambers?

His Honour: Yes.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *secs.* 78-83.

CASE 225.

CHANCERY COURT COUNTY PALATINE OF LANCASTER.
1885.
Nov. 25.
Before
VICE-CHANCELLOR BRISTOWE.

SUPREME COURT OF JUDICATURE.
COURT OF APPEAL.
1886.
April 2.
Before
LORDS JUSTICES COTTON, BOWEN, AND FRY.

SCHOFIELD AND OTHERS *v.* VAUSE AND OTHERS.

Friendly society—Right of Lodge to secede from District—Acknowledgment of Registry—Evidence of secession—Friendly Societies Act, 1875 (38 & 39 *Vic.*, *cap.* 60), *sec.* 11, *sub-sec.* 10, *sec.* 22, *sub-sec.* (*d*) *and* (*e*), *sec.* 30.

Injunction granted restraining the defendants from applying to register or proceeding to register the Loyal Caledonian Lodge (Bolton District) as a society separate from and independent of the plaintiff society or otherwise than as a branch or lodge of the plaintiff society, and from carrying on or continuing to carry on the business of the said lodge as a separate society without first complying with the rules of the Bolton District and of the plaintiff society as to secession or separation.

Decision of the Vice-Chancellor affirmed by the Court of Appeal.

The following is a report of an important case instituted by order of the Directors of the M.U. against the Trustees of the Caledonian Lodge, Bolton District, and which case was decided by the Vice-Chancellor of the Chancery Court (County Palatine of Lancaster) on the 25th November, 1885.

This was an action in the Chancery Court of the County Palatine of Lancaster (Manchester District), in which the plaintiffs were the trustees of the Order, the trustees of the Bolton District, and one member of the Loyal Caledonian Lodge of the said district, and his wife, and the defendants were the trustees and officers of the said lodge. The plaintiffs claimed an injunction to restrain the defendants (the officers

of the lodge) from applying to register or proceeding to register the lodge as a society separate from and independent of the Order, or otherwise than as a branch or lodge of the Order, and to restrain them from carrying on or continuing to carry on the business of the lodge as a separate society. The plaintiffs further claim an injunction to restrain the defendants, as officers of the lodge, from applying its funds and property for the purposes of a new society, or for any purposes other than the purposes of a lodge or branch of the Order, and in accordance with the certified rules of the lodge (the Bolton District) and the Order, and to restrain the defendants, as officers of the lodge, from withholding from the Order and the Bolton District the contributions which those bodies were entitled to receive out of such lodge funds and property, and to restrain the defendants, as officers of the lodge, from committing any breach of trust in relation thereto. The lodge was instituted in the year 1830, and its rules were duly registered under the Friendly Societies Act, 1855, in the year 1873. On Whit-Monday, 1883, the A.M.C. resolved that every lodge whose rules had not then been re-registered be required to re-register such rules as a branch of the Unity, on or before 1st May, 1884. On the 29th September and 29th December, 1883, at the quarterly meetings of the said district, the attention of the lodge was called to this resolution. On the 29th March, 1884, at a quarterly meeting of the said district, it was resolved the resolution of the A.M.C. ordering the suspension of lodges not re-registered under the Friendly Societies Act, 1875, before 1st May, 1884, be carried into effect by the district officers. On the 7th May, 1884, the district secretary wrote to the secretary of the Loyal Caledonian Lodge, announcing the suspension of the lodge, which was forthwith carried into effect. In September, 1884, a special general meeting of the lodge was held, at which it was resolved that the lodge should become and be registered as a society separate and distinct from the Order. The lodge subsequently prepared new rules and took other steps with a view to carry the said resolution into effect. On the 18th May, 1885, the action was commenced, and was heard before the Vice-Chancellor of the County Palatine of Lancaster on the 25th November, 1885. Mr. S. Taylor, Q.C., and Mr. Maberly, instructed by Messrs. Cobbett, Wheeler, and Cobbett, solicitors, Manchester, appeared for the plaintiffs, and Mr. Rotch instructed by Messrs. Grundy, Kershaw, and Co., solicitors, Manchester, agents for Messrs. Holden and Holden, solicitors, Bolton, for the defendants.

Mr. Taylor stated the facts as above set out, and relied upon the title of the lodge, its first rule, the certificate of registration, and the certificate of membership, as all showing beyond question that the lodge from its creation was a branch of the Order, and he then cited the rules of the Order and district as showing the terms upon which a lodge had a right to secede from the Order, and urged that the Caledonian Lodge had no right to constitute itself a separate society without complying with the provisions of the rules with reference to secession.

Mr. Rotch called attention to the absence of reference in the rules of the lodge generally to the Order or district, and urged that they formed a complete code in themselves, enabling the lodge to carry on business without reference to or assistance from the district or Order. He also urged that the connection of the lodge with the Order was purely voluntary, and could be severed at will without reference to the rules of the district and Order. He argued that the lodge was, by its

registration in 1873, constituted a separate society, inasmuch as under the Friendly Societies Act, 1855, there was no power to register a branch as such. He cited the Friendly Societies Act Amendment Act, 1876, and the regulations issued by the Treasury thereunder, and also the Memorandum of Instructions issued by the Chief Registrar.

His Honour the Vice-Chancellor then delivered judgment. He said: I do not call upon you to reply, Mr. Maberly. These societies of Oddfellows and other friendly societies are constituted for very beneficial purposes, and are constituted in accordance with definite and fixed rules, which have in many instances received judicial construction, and have been much assisted by Acts of Parliament from time to time passed. It is quite clear—and indeed everyone has more or less some experience of the working of these societies—it is quite clear that it is as important for the members of the societies themselves as for the public at large, that those rules which are carefully considered and passed, and are the charter, if one may so speak, of the societies, should not be lightly broken down and should not be evaded. I do not use the term "evaded" in a wrong sense; it is important that those rules should not be lightly passed over and got rid of, but should be treated as the binding rules and regulations of the societies. With reference to the last point of Mr. Rotch's argument, I do not for a moment mean to say that there might not be within one of these branch or auxiliary societies a power to alter such rules as should not be of the fundamental basis—of the essence of their existence. It might well be that a rule should provide that people should give a postal address to which letters should be sent; that is a very ordinary rule; and it might be found that that was a wholly useless provision because all the members lived close together, and it was not desirable to send letters by post, but that a book should be kept in which the addresses should be entered to which members should have notices sent to them by hand. That sort of rule is not a fundamental one, and might readily be changed; and that would be a fair and reasonable alteration of the minor rules contained within the rules which constitute the branch. Therefore, I do not for a moment mean to grant such an injunction as to restrain any such alteration of rules as are not in my judgment fundamental and essential rules of the society. Passing away from that, let us consider what really is the great contest fought with such ability by Mr. Rotch in the argument that he has addressed to me this morning. It is this, as it seems to me: that a society—I will use the term lodge as the more convenient term—it seems to me that the contention is that a lodge being a branch lodge of the great Independent Order of Oddfellows, Manchester Unity, Friendly Society, may, after it has for 50 years enjoyed the advantages of being a branch affiliated to the large society, disregard the rules which have been its rules, its very cause of existence for half a century, and may say because we now find that owing to our lengthened existence we have become a profiting society and a more rich society and lodge than other lodges, we will by our own mere motion split off from the parent society and so carry away with us our money and disregard all the benefits we have received for 50 years past, and disregard the rules which are the real and essential basis of our youth, middle age, and permanent and present existence. It seems to me that that is an impossible contention; and I think in order to see what really are the rights of the parties, one has no need to go outside the particular rules which the parties have agreed to be the rules and basis on which the lodge or society was

constituted. Now in the first instance one has to look at the particular rules of the lodge. Then you have to see what those rules refer to, and there you are carried again to the larger rules which govern the parent society, which constitute really the basis of all the auxiliary or smaller societies which branch from it. First of all, as to the rules of the lodge itself. It seems to me clear beyond question that the constitution of the society is covered by the very first rule which is the outset and beginning and forefront of the whole thing. "That this society shall be called the "Loyal Caledonian Lodge"—that is merely its name. The heading is "Constitution and Object." The name is immaterial. Now the constitution—"It shall" (not may) "form an auxiliary lodge of the Bolton District Independent Order of Oddfellows, Manchester Unity, Friendly Society"—that is the constitution. Then come the objects. Those are the friendly objects for which these and other friendly societies are founded. The very beginning therefore, is that it is to be an auxiliary lodge of the Bolton District Independent Order of Oddfellows, Manchester Unity. In going through the rules it seems to me to be perfectly apparent in the very rules to which Mr. Rotch has called my attention, that they are rules which work into and form part of the whole and larger set of rules which are the district rules, and the rules which are the original or foundation rules of the society itself. Therefore, I think it is quite clear that when you once have the distinct constitution of the society as a branch of a district you then see what are the rules of the district, and you find definite rules of the Bolton District, which rules, in my judgment, are part and parcel of the others as much as if they were incorporated within the rules of the Caledonian Lodge; and there you find that which you would expect to find, and which is ordinarily to be found in all rules of this kind, a succession of detailed rules which work out the mode in which a charitable or friendly society is to carry into effect its objects. The most important or one of the most important of those rules, is that which applies to the district management fund, the funeral fund, and other payments which are to be made by the society. That is really the basis of the society, because, although there may be certain social objects or purposes in which these societies may more or less join, the origin of the society is a friendly society. It is to provide for the funeral and so on of deceased members. You find that this is a branch of the district, and that all lodges in the district shall join in paying the funeral claims, and that the amount paid during each quarter shall be divided into an equal rate per member, and charged to each lodge according to the number of its members. There is a sort of capitation call upon the members of each lodge to make up the district fund, which district fund gives the funeral money out to the members, or to the wives of deceased members, as it may happen to be. It does not in the least follow that the lodge which is rich to-day will be rich to-morrow, because it has to contribute *per capita* to the general district fund; and if there happens to be an unhealthy year in one district, and fifty funeral allowances have to be found, the next year there may not be one allowance to be paid. It is to equalise that that the district funds are formed, and then those moneys not falling upon one small individual branch, it is enabled to keep up by the payments being extended over a considerable area of a district. That is one of the foundations—one of the fundamental things —upon which these societies are formed, and which has enabled them to have so much success. Then come further rules, applicable to what at this present moment appears to be the desire of this society or this lodge. It may be that by reason either that it has more calls made upon it

than it thinks it ought to have, or that it thinks that a better district exists on that side or the other of where the members live—say that Bury is better than Bolton—they may desire to affiliate themselves on to another district. What do they have to do? The whole is governed by the rule that a lodge, being dissatisfied with its position, may secede from its parent; and the secession of branches is a thing so well understood that I really felt surprised at hearing an argument about it. It is a perfectly well-known thing that when one of these branch lodges is dissatisfied with its position it resorts to secession. It gets power then to leave the parent society, but it has to make certain arrangements with reference to the funds, which are all important in reference to the other members of the district which constitute the aggregate district of which that one lodge is only a member. It would, in my judgment, be a most fatal thing to the institution and continuance of these societies if the moment a lodge became rich it could say, *ex mero motu*, I cut off all interest with the auxiliary or with that district of which I have hitherto been a branch; I will claim my whole funds; I may have drawn upon you for the last fifty years; I may have got all sorts of payments from the district over what I have contributed; but, owing to some circumstances, I have become richer than I was before, and now I will carry away my funds and cease to be joined to the district of which I have hitherto been a lodge. It seems to me that that is entirely concluded by the very foundation of the existence of the society, and it would be entirely abrogating the most important rules by which this lodge has existed if such a thing could be allowed. Moreover, I think it is necessary to refer again to the rules of the society, namely, the big rules —the rules marked in the exhibit A. There you find exactly what you would expect to find—that is, you find full power of secession and breaking up of branches, and how the matter is to be dealt with as regards money; how the Sick, Funeral, and Unity Funds are to be disposed of. You find a regular course laid down by which any lodge, having been a branch lodge and desiring to secede from being a branch lodge, and to become an independent lodge, may do so. As I said at the outset, I think it has always been held that, where you can in matters of this kind find an internal forum, which the parties have themselves elected to be the governing rules by which they shall abide, and to which they shall be subject, it is not the duty of this court, or of any court, to set aside those rules and to adopt some other rules which are not the rules which have been the governing rules between the parties who have constituted the society. If, therefore, it rested merely upon the rules, I must confess, after hearing Mr. Rotch, I was not able to appreciate the force of his argument, which he did his best to put before me. I have no doubt whatever upon the rules that the proper course for the branch society wishing to secede is to follow the rules laid down for secession; and I do not intend in any shape or way to restrict the lodge, the Caledonian Lodge, from adopting those rules, provided in the very regulations under which that lodge has existed for seceding from the parent society; it must secede in accordance with the rules so laid down for secession, but in any other way, in my judgment, the lodge has no power to secede. Then Mr. Rotch addressed to me a lengthy argument upon the Acts of Parliament of 1875-6, but they do not, as it appears to me, have very much to do with it. The rules were registered in 1873, before the Act of 1875 was passed. The registration was made in pursuance of a threat, and indeed of an actual suspension of the lodge, because it did not do that which was a part of the desire and resolution of the parent society. Then that suspension was dropped after a little

time; the lodge came in to, or adopted the resolution and obtained the Registrar's certificate, which again is very important as showing what the lodge itself considered to be its duty. The certificate is—"I hereby certify that the foregoing rules of the Caledonian Lodge, No. 418, of the Bolton District Independent Order of Oddfellows' Friendly Society, held at the Ainsworth Arms, Halliwell, in the county of Lancaster, are in conformity with, etc." Again, if it were necessary, they adopted the district of Bolton as being that of which they were really a branch lodge. In my judgment they are not now entitled to carry away their funds and part company with the district of which they have been a branch, except in pursuance of and in accordance with the rules as to secession contained in the rules to which I have referred. I think, therefore, that an injunction should be granted. I am not quite sure that I follow the exact words of the injunction claimed, but it should be such an injunction as would in effect prevent them from leaving the society and registering themselves as a new independent society, except and unless by the adoption of and following the rules as to secession provided in the rules themselves.

Mr. Maberly: If your Honour pleases, I have altered the endorsement on the writ in this way: "An injunction to restrain the defendants and other the officers of the above-named Loyal Caledonian Lodge from applying to register or proceeding to register such lodge as a society separate from and independent of the plaintiff society or otherwise than as a branch or lodge of the plaintiff society, and from carrying on or continuing to carry on the business of the said lodge as a separate society, without first complying with the rules of the Bolton District and of the plaintiff society as to secession or separation."

The Vice-Chancellor: It should be Bolton District, etc., Manchester Unity. That would in effect bring what I think is important, namely, there would be a general meeting which would have to be called and would bind the minority.

Mr. Taylor: The rules provide for that.

Mr. Maberly: Secondly, "An injunction to restrain the defendants and others the officers of the said lodge from applying the funds and property of the defendant lodge for the purposes of a new society, or for any purposes other than the purposes of a lodge or branch of the plaintiff society otherwise than in accordance with the rules." Then it runs on as we have it.

The Vice-Chancellor: I think that seems right. You do not want a receiver.

Mr. Maberly: No.

The Vice-Chancellor: I am glad to see that the costs have been kept down.

Mr. Taylor: I should ask for the costs.

Mr. Rotch: We have no pleadings on either side. I hope your Honour will not make us pay costs.

The Vice-Chancellor: You have been so prosperous that it does not lie in your mouth to say you cannot pay. The costs must be taxed between party and party.

Mr. Rotch: Your Honour sees that this is a very important question indeed. It will affect hundreds and hundreds of these societies, and if the parties, in their wisdom or otherwise, want to go any further, I presume the injunction will not prevent their doing that which they are doing now—paying sums and giving an undertaking in damages. If we were to present notice of appeal, say within a fortnight, the present arrangement which has been made might be carried on until the appeal were determined. We are now paying, with an undertaking to the plaintiffs in damages.

Mr. Taylor: I think there would be no objection to that.

Mr. Rotch: It would be a *modus vivendi* until the appeal.

Mr. Taylor: You are keeping an account?

Mr. Rotch: Certainly.

The Vice-Chancellor: Do anything that is now done so long as it is done openly.

Mr. Maberly: This suspension of the injunction will last a fortnight.

Mr. Rotch: Yes, and if appeal lodged, until the appeal is heard.

The Vice-Chancellor: If the parties desire to appeal, Mr. Rotch, you should let the other side know within a fortnight. You ought to serve notice of appeal within a fortnight. These matters are going on from time to time, from week to week, and people ought not to be hampered.

ON APPEAL.
Before
LORDS JUSTICES
COTTON, BOWEN,
AND FRY.
1886.
April 2.

This was an appeal of the defendants, the Officers of the Loyal Caledonian Lodge of the Manchester Unity Order of Oddfellows Friendly Society, from the Judgment of the Vice-Chancellor of the Chancery Court of the County Palatine of Lancaster.

Mr. Romer, Q.C., and Mr. O. L. Clare (instructed by Messrs. Holden and Holden, solicitors, of Bolton) appeared for the appellants; and Mr. Cozens Hardy, Q.C., and Mr. H. B. Buckley (instructed by Messrs. Cobbett, Wheeler, and Cobbett, solicitors, Manchester) appeared for the respondents—the Order.

FIRST DAY—2ND APRIL.

Mr. Romer said: I appear on behalf of the appellants, who are the defendants in the action. It is an appeal from an order made by the Vice-Chancellor of the County Palatine on the 25th November, 1885, upon a motion made by the plaintiffs in the action, the motion being

treated by agreement as the hearing of the action. By the order the Vice-Chancellor granted an injunction against the defendants, and it is from that injunction that the defendants now appeal. I must tell your lordships first who the parties to the action are. The defendants are the trustees of a friendly society called the Loyal Caledonian Lodge Society. The plaintiffs are, in the first place, the trustees of a friendly society called the Independent Order of Oddfellows and Manchester Unity Friendly Society; and, secondly, the trustees of a subordinate society called the Bolton District Branch of the Independent Order of Oddfellows which I first mentioned; and, thirdly, certain members of the defendants' society, being a minority of the members protesting against a resolution come to by a majority of the members as being *ultra vires*. Those three societies are independent separate friendly societies, but they have for several years been connected in a manner which I must now mention to your lordships. The defendants say that the connection has been voluntary on their part. Our title is the Loyal Caledonian Lodge, and the Bolton branch is called the Bolton District Branch of the Independent Order of Oddfellows. In fact, your lordships have here as plaintiffs the trustees of what I may call the parent society—the trustees of the district society, and a small minority of the members of the defendant society. Now, the defendants' case, as I have told your lordships, is that the connection between our society and the other two societies has been, as far as our society is concerned, abolished, and that the connection was without any legal obligation to continue the connection longer than the defendants desire. Recently, under circumstances which I shall have to shortly mention to your lordships, the defendant society have determined and formally resolved no longer to continue its connection with the other societies; and the society has resolved to alter its name and rules, and has applied to the Registrar of Friendly Societies to have its new rules registered. The motion which was made in this action on behalf of the plaintiffs was to restrain the defendant society from doing that, and, as I have told your lordships, an injunction has been granted by the Vice-Chancellor accordingly. Substantially I may say the question which comes before your lordships, and which is one, no doubt, of very great importance, is whether or not the defendant society is entitled to sever its connection from the other two societies. This case will govern many other cases probably, and it is no doubt a case of great importance in the world of these societies. I will now tell your lordships the material facts in the case, and they are scarcely, I think, in dispute. The defendant society was established in 1830, and I presume—though it does not appear from the papers before me—that the other two societies were earlier in point of date. It must, I think have been so. Until 1873 the defendant society—that is to say the lodge—had no registered rules, but I will admit at once that at the very outset of the society it was contemplated that there would be, as we say, until otherwise resolved, a connection between our society and the other two societies, as indeed our very title shows. Your lordships will see the title of the lodge. What rules governed the defendants' society between 1830 and 1873 I do not know, nor do I know that they are material in any way. The first rules that have been furnished to me, and that appear in evidence in the case, are the rules that were registered in 1873. The registration was made on the 18th May of that year, under the Act of 1855 governing friendly societies, being the Act 18 & 19 Vic., c. 63. All that I need refer to that Act for is to say, or to remind your lordships, that it only contemplates the registration of separate friendly

societies, and does not contemplate the existence of what might be called legal branches of other societies, but it simply contemplates the registration of independent friendly societies, and admitted by my society, the defendants' society was registered as a friendly society, and became a friendly society for all purposes under this Act. Section 27 of that Act provides that "After the rules of a friendly society shall have been so certified"—and, of course, ours were certified—"by the Registrar as aforesaid, it shall be lawful for such society by resolution at a meeting specially called for that purpose, to alter, amend, or rescind the same or any of them or to make new rules; and it shall be lawful for any friendly society formed and established under any of the Acts hereby repealed to alter, amend, or rescind the rules by which their society is governed, regulated, or managed or to make new rules," with a provision that copies of any alteration in the rules are to be forwarded to the Registrar so as to be registered. But there is clearly an absolutely statutory right to the society to alter, amend, or rescind their rules or any of them; and the plaintiffs in the action will have to satisfy your lordships that that statutory right of altering rules is to be restricted in such a manner as to show that only certain rules can be altered or rescinded. Now, my lords, I think I may now refer to the rules of the Loyal Caledonian Lodge at once. The first rule is called "Name, Constitution, and Objects." It commences—"That this society shall be called the 'Caledonian Lodge,' and shall form an auxiliary branch of the Bolton District of the Independent Order of Oddfellows' Manchester Unity Friendly Society, and shall have for its objects the raising of funds by entrance fees, subscriptions of the members, fines, donations, and by interest on capital, for the following purposes, viz.: Insuring sums of money to defray the expenses of the burial of deceased members, and of members' deceased wives, and of deceased members' widows; for rendering assistance to members when sick and not able to follow their employment, and for granting temporary relief to members or their families in distressed circumstances. Every member shall have an equal voice in all the property and concerns of the society, and when at any time the votes may be equal the president (for the time being) shall have a vote which shall be the casting vote,"—then come these very important words—"but no persons but those members who subscribe to the funds and conform to the rules of this lodge shall have any control whatever in the administration or distribution of the funds thereof." Then rule 2 provides—"That all moneys received on account of entrance fees, donations, and interest on capital shall be applied in carrying out the objects of this society and in paying the expenses of management according to the rules thereof." Then follow provisions with regard to investments. Clause 3 provides for the holding of the meetings of the lodge at a particular place or at such places as the majority of the members may determine, with a provision as to summoning members by a seven days' notice. Clause 4 provides for the appointment of officers, trustees, and a treasurer. Clause 5 provides: "This lodge shall consist of an unlimited number of members. The business thereof shall be conducted by a committee of management, consisting of the treasurer, sub-treasurer, secretary and assistant secretary, with the members present in open lodge." Then come various provisions or rules as to the duties of the officers; and rule 12 provides for the treasurer taking care of the funds and of the books and documents. (Mr. Romer then referred at length to a number of other rules of the lodge.)

Lord Justice Cotton: Is there no provision for the payment of any contribution to the central society?

Mr. Romer: None whatever, my lord; that is why I am calling your lordships' attention to these rules so very particularly, in order to show that by its rules it is a self-contained friendly society.

Lord Justice Fry: Is there not some reference to the other bodies?

Mr. Romer: Yes, my lord; but the only reference to the other bodies is first, in the name as I have told your lordships, and secondly at the end of the rules in section 57. That section provides for the settlement of disputes by arbitration, and how the arbitrators are to be appointed, and the end of section 57 runs thus: "The decision of the arbitrators or meeting shall be subject to appeal to the final arbitrators appointed by either of the general laws of the Order." Then the last rule 62 is: "That no new rule shall be made, or any of the rules herein contained or hereafter to be made, shall be amended, altered, or rescinded, unless with the consent of a majority of the members present at a summoned meeting of the society, specially called for that purpose." It is sufficient for me to call your lordships' attention for the moment to the fact that the society has in its own rules a perfect series of regulations for perfectly and thoroughly conducting the business of this society as an independent friendly society. It was originally contemplated as I have mentioned—this is one of the questions which will be for your lordships to determine—that so long as they desired to be a branch of the Order of Oddfellows they should do so, and the question will be whether they might not if they chose alter their rules in that respect and still remain the independent friendly society which they undoubtedly became by registration. The head society was registered as a friendly society, and the district body was registered as a friendly society; all the district lodges were always registered as separate friendly societies. Until the Acts of 1875 and 1876, which I am going to call your lordships' attention to in a moment, there was no means known to the law by which you could register a society as a legal branch of a society; the registration of a society was the registration of its branches, and the Acts of 1875 and 1876, particularly that of 1876, point strongly to what I shall argue that this connection of these branch societies with the district or head societies must have been purely in the nature of a voluntary connection, that is, that they were separate societies, and were able themselves to regulate their societies. The connection between these three societies was this. As your lordships will find, there is nothing whatever about the connection in the rules themselves. In the first place I will take the constitution of the lodge. Each member of the lodge contributed a certain sum on entrance to the lodge, and he contributed a certain sum while he continued to be a member of the lodge; the lodge out of that fund paid its expenses of management, and paid the allowances to its sick members. Under the rules of the lodge it also had to pay direct the payments for funeral expenses in respect of deceased members. But practically it did not do that, though it ought to have done so under the rules. What it did, was to have that settled by the district lodge. The lodge received all its members' subscriptions, it paid all its expenses of management, and all outgoings, except that it did not pay directly funeral money—it was not paid except as in a method of account. I am rather pointing out now what the connection in fact was between these societies, and I will try to distinguish them by different names. I will call them for shortness by single terms—our society, the lodge; the next one, the district; and the third society, the Order. They will be referred to

therefore shortly as the lodge, the district, and the Order; those names will represent the three friendly societies. Now, my lords, the lodge did in a method of account, which I will mention directly, pay so much per head in respect of the members of the lodge. Each lodge in the district paid so much a head to the district, according to the number of members of each lodge; that amount was fixed from time to time by the district, and each lodge made to the district a quarterly return of deaths of members of the lodge; that is to say, what sums of funeral expenses had to be paid. Then the district had its funds made up in this way—the district in the first place received those sums which the lodges paid in the way I have mentioned to your lordships. In addition to that it had members of its own; that is to say, members of itself as a separate friendly society, who made payments to it direct. They were generally, I believe, old members of some lodge (though I do not know that they were exclusively so) which had come to an end, or whose connection as lodges with the district had ceased; the practice, as I understand it, being that if a member belonged to a lodge which had ceased to be a lodge, or if that lodge went he was taken on to the district, and his contributions were paid to the district direct, and he got relief from the district, both in respect of sick and funeral allowances. Therefore the district received contributions in two respects—first it received payments from the lodge in the way I have mentioned, and it received payments from what I will call its own members. Out of those funds which the district so received, it paid all its expenses of its own management, and it paid the funeral claims in respect of deceased members of the lodges in the district. Now that was done in account in this way. We will take the accounts between the district and any one lodge in particular. There were quarterly accounts kept, and the district said to a particular lodge at the end of the quarter: "You have to pay us so much per head from the members of your lodge"—that I will call A—"we have to pay you in respect of the sick members of your lodge B; you pay us A, and we pay you B." Then if B was greater than A, the district paid to the lodge B, minus A, and *vice versa;* in other words, the balance was paid over one way or other. In that way, your lordships see that this lodge, instead of (according to its rules) paying its funeral claims in respect of deceased members directly, as provided by its rules, received them from the district branch, as I have mentioned. Then the district not only paid in the way I have mentioned to your lordships the claims of the lodges in respect of the funeral expenses of deceased members' funeral claims, but of course it had to pay to its own members direct both their sick and funeral claims. The district also occasionally made contributions to assist any poor lodge in the district. It also paid contributions to the Order, the amount of those contributions being fixed by the Order. Just as there were a certain number of lodges connected with the district, so there were certain districts connected with the Order. That brings me now, my lords, to what the Order did. In the first place, of course, the Order received those contributions which were paid by the different districts; it also had members of itself direct, that is to say, members of itself as a friendly society direct—in other words, members who did not belong to any lodge or district.

Lord Justice Bowen: In regard to the registration, the district was registered just in the same way as the lodge?

Mr. Romer: Yes; and so was the Order.

Lord Justice Bowen: In the district rules was there any notice taken of the subordinate lodges any more than there was by the earlier rules of the district by the lodge?

Mr. Romer: I have not got the earlier rules; I have only the rules which were passed after 1876, and I cannot answer your lordship's question. Then the Order, out of the fund which it obtained from the districts and from its own members, paid its expenses of management, the claims of its own members in respect of sick allowances or in respect of funeral allowances, and also occasionally assisted the poor district societies. The lodges sent delegates to the district to confer from time to time as to the management, or upon the general affairs, at any rate; and with those delegates they elect members from the district to represent the district at the Order, and the Order was regulated in that way by those delegates who so assisted in regulating the affairs of the Order. Now that was the position of affairs until the Act of 1875 was passed. That was the first Act which proceeded to deal with the question of branches of these societies. It is the Act 38 & 39 Vic., cap. 60, and section 4 contains the definition of a branch: "Branch means any number of members of a society under the control of a central body having a separate fund administered by themselves or by a committee or officers appointed by themselves." It is not an easy definition to follow, but it means generally any number of members of a society which is under the control of a central body having, as it says, "a separate fund administered by themselves or by a committee or officers appointed by themselves." If there was any dispute between the lodge and the district, or rather between the Order and the district, the Order would threaten that it would have nothing more to do with the district, so that the district might then go its own way; and so in the same way if a lodge did not do what the district wished, the district would say. "Very well, we will have nothing more to do with you." Prior to the Act of 1876, and I shall have to call your lordships' attention to this more particularly bye and bye, it is clear that any lodge could sever itself from a district, and that any district could sever from the Order if it chose to do so. As a matter of fact there were many cessions of lodges from districts of the Order, and of course there was no reason why they should not, nor any obstacle to prevent it. Then, my lords, I will refer to section 29 of this Act of 1875. In the first place it is clear that we should not come within the definition of a branch. Then it provides that the application for registration shall be accompanied by a copy of the rules. If a society having branches applied to register itself with the branches it had to give a list of every branch and of its officers. Then copies of the rules of the branches are to be sent, if they are identical, and if they are not identical, with a statement that they are not identical with the other rules. Then it provides that if a society has no funds under the control of a central body, to which every branch is bound to contribute, it is deemed to be and must be registered as a separate or single society. We say it is clear that this Order could not have registered itself so as to thereby register, as it were with it, the districts and the lodges. It was not a society having a fund to which every branch was bound to contribute, and your lordships will see further from the Act of 1876 that that is quite clear. Then sub-section 4 of that section provides: "Until a copy of the rules of a branch (in the case hereinbefore mentioned) has been registered in the country in which such branch is established, the society is not entitled to any of the privileges of this

Act in respect of such branch, and until a copy of any amendment of the rules of a branch has been so registered, the same does not take effect as respects such branch." Then sub-section 6 provides: "Where a society has no fund under the control of a central body to which every branch is bound to contribute every branch is deemed to be and must be registered as a separate society, whether its rules are identical with those of other branches or not." So that, as we say, clearly so far as our society is concerned, it could not have been registered as a branch, and that it must have been registered, if it was going to be registered at all, as a separate society, and certainly the Order, or the district, could not thereby by registration have in any way tied us as a branch of their registered society.

Lord Justice Cotton: You contend, as I understand, that you are not a branch at all?

Mr. Romer: That we are not a branch at all. Then, my lords, in that condition of affairs, as there seemed to be some ambiguity about that, the Act of 1876 was passed. That Act is the 39 & 40 Vic., c. 32 It is an Act to amend the Act of 1875, and sections 3 and 4 are the important sections there. (Mr. Romer then quoted these sections.) I ought, my lords, to have referred to where the Treasury regulations are mentioned. They are referred to in section 2: "In this Act the term Treasury regulations means any regulation made and approved of by the Treasury, and for the time being in force under and by virtue of the principal Act." They have the effect of an Act.

Lord Justice Bowen: Is it suggested on the other side that these Acts do not apply?

Mr. Cozens Hardy: Certainly not, my lord.

Lord Justice Bowen: Then why go through all the provisions of them?

Mr. Romer: They show, as I say, my lord, that the legislature has expressly recognised the independent position of a society such as mine. I think your lordships will find that the provisions of these Acts ought to be before you in any case, in regard to what they have done here. I have nearly finished with the Act now. Section 4 provides—"Nothing in the principal Act or in this Act contained shall prevent any registered society or branch from contributing to the funds, or taking part by delegates or otherwise in the government of any other registered society or registered branch of a society as may be provided in the case of such first-named society or branch, without becoming a branch under the Friendly Societies Acts of such other society or branch." Then with that there are some Treasury regulations set out, being the Treasury regulations referred to in the two Acts. Those Treasury regulations are these—

Lord Justice Fry: What is the date of the Treasury regulations—are they after the Act of 1876?

Mr. Romer: Yes, my lord. Sections 49, 50, and 51 are the important ones. Section 49 provides—"No branch of a society," etc., etc. (The learned counsel read the section). That, your lordships see, provides expressly that no society can be registered as a branch, if it has been

registered formally as a separate society, until it cancels its separate registration; it must cease to be a separate society before it can be registered under the Acts of 1875 and 1876.

Lord Justice Fry: As I understand, a branch is a society or a body which has separate funds but not under their separate control.

Mr. Romer: Exactly, my lord; and we could not have been that without cancelling our existing rules and ceasing to be an independent friendly society. It is true the Act gave us certain powers, but I do not think we could have done so, even if we had chosen.

Lord Justice Bowen: Is your point this, whether it is in your rules or not, that you had not the power of entering into certain relations with some district or Order?

Mr. Romer: I do not know whether my friends will suggest that we had. I presume they will say two things: first, that it was part of the fundamental constitution of our society that we should be a branch, and that that being so we had no power to cease to be a branch; that we were bound, as part of the fundamental constitution of our lodge, that we should be a lodge of the district, and that we had no power ever to sever the connection. Then, further, that having gone on for this number of years receiving the advantages, as they say, of this connection, we have no right to sever it. But your lordships will find, curiously enough, that one reason why we will not continue with them is that they have received far more advantage from the connection with us than we have got from our connection with them.

Mr. Cozens Hardy: I do not for a moment say that my friends cannot secede, but I say they must secede *modo et forma* according to the rules.

Lord Justice Cotton: According to what rules?

Mr. Cozens Hardy: The rules of the district of which they are a part.

Lord Justice Cotton: Is there any definition of a branch in the Act of 1875?

Mr. Romer: No, my lord.

Mr. Cozens Hardy: They are not registered under the Act of 1875.

Mr. Romer: What they did was this: they registered themselves under the Acts of 1875 and 1876, and then they passed resolutions that all the districts and lodges must register themselves under those Acts. We refused, and thereupon they excluded us; and they say, "Although we have excluded you," altering the rules so as to change their name and so forth, "yet, doing that, although we have cast you off, you shall go off only in accordance with certain rules," which they have passed since the Act of 1876, and which prevented branches, as they are pleased to call us, going off except on terms of dealing with the funds in a particular manner. And your lordships will find that the injunction which the Vice-Chancellor has granted is not such a one as would have been granted even if they had that right, but an injunction restraining us from registering our new rules unless we comply with the regulations of the Order passed since those Acts of 1875 and 1876.

Lord Justice Fry: As far as I gather, there are reciprocal advantages derived in these societies, which is part of their fundamental constitution.

Lord Justice Bowen: I suppose they say you have so conducted yourselves as that you have prevented yourselves from acting independently.

Mr. Romer: The evidence is clear, my lords, that from the very first moment we refused to register as a branch, or to have anything to do with it, and they have cut us off because we would not register ourselves as a branch, even if we had the power to do it, and I say that we could not have done it having regard to the constitution of our society. However, that is what they have done; they have passed provisions that all the branches shall register under these Acts, with the further proviso that if any lodge or district did not do so they would cast us off.

Lord Justice Bowen: Well, then, if you refuse, what then?

Mr. Romer: They send an officer to get our books. In order to avoid all dispute we hand them the books, and say, "Go away, we will have nothing more to do with you." Then we alter our name, and we have no more to do with the Oddfellows. We then propose to register our rules, and then they move to stop our doing so, and this is the curious part of it, that the Vice-Chancellor grants an injunction restraining us from altering our rules, and from registering our new rules, unless we comply with the new rules which have been passed by them since the Act of 1876, which rules were never in existence before the Act of 1876 was passed. They have changed their society, and, having changed their society, and passed rules preventing branches from going away, and compelling them to become what they never were before—legal branches—they oust us because we will not consent to that, and they get an injunction restraining us from doing so unless we comply with their new rules.

Lord Justice Fry: Both the district and the Order registered?

Mr. Romer: They both registered, and they both had new rules. Now, my lords, take, for instance, rule 10; this is an entirely new rule. These rules, my lords, I am told were registered in 1880; but it will not be disputed that these rules which I am going now to read to you did not exist prior to the registration of the district under the Act of 1876. The first point will be whether, this being passed as it is, it does not refer to legal branches under the Act, and, if so, it does not apply to us at all. (The learned counsel then read district rule.) That is to say, they would break it all up, because the funds would have then to be divided, and if there are any members, according to this new rule, belonging to the lodge who will not continue with them, but who desire to continue members of the Unity, the lodge shall pay over to the district certain shares in respect of those members. (District rule read.) In other words, they pass a rule saying that if a branch chooses to secede, as they call it, they must do it in a certain particular way, and then apply their funds in a manner which the district chooses to provide. The corresponding rule in the Order is at page 8. It is rule F. 1, headed "Secession and breaking up of branches." The first part of the rule, sub-section 1, is in the same words, I think, and then come these words in sub-section 2, "In the event of the host of a lodge-house," etc., so that there is this additional provision passed, that not only shall our

funds be dealt with as they choose, but that if there should be any minority in a lodge who choose to do so, notwithstanding the secession, they shall at once be removed from the lodge and taken in by the District Oddfellows.

Lord Justice Fry : Have you the original constitution of this society ?

Mr. Cozens Hardy : I think we have it, my lord. They were constituted in the year 1830, and they are all in the same form. That is the form of the dispensation granted in the year 1830—[Handed to the court.]

Lord Justice Bowen : What is a dispensation ?

Mr. Cozens Hardy : It is the authority granted by the Order to certain persons to establish a lodge in the district.

Lord Justice Bowen : Then was this lodge formed out of an Order already existing ?

Mr. Cozens Hardy : Yes, my lord, undoubtedly.

Lord Justice Bowen : That was what I asked Mr. Romer, but he did not seem to be able to tell me.

Mr. Cozens Hardy : This was lodge No. 418, which was established by dispensation granted by the Order.

Lord Justice Fry : Was it a dispensation granted to existing members of the Order ?

Mr. Cozens Hardy : To certain individuals meeting at a certain house in a certain parish.

Lord Justice Cotton : But those were not persons who were already members of the Order.

Mr. Cozens Hardy : Yes, they were ; if your lordship will look at page 18 of those rules you will see it. In the court below it was argued on the assumption that there was a change in the rules between the date of the dispensation and the registration, but I am instructed that there is no difference in any material point.

Lord Justice Bowen : What was crossing my mind was, though I daresay it may turn out not to be so, that there was a difference in the rules in 1863, and I wanted to know what the rules of the district were at that time.

Mr. Cozens Hardy : It was argued in the court below on the assumption that there was no difference.

Mr. Romer : I am glad to say that I can now assist your lordships, because I have before me now for the first time the rules of the Order for 1871.

Mr. Cozens Hardy : But here is the old book itself containing the entry with regard to No. 418, that is to say, relating to the dispensation for this particular lodge. Some members of the Order applied to be incorporated in the lodge.

Lord Justice Fry: That appears to be so, because I see they confirm to the officers and brothers full authority to open and establish a lodge.

Mr. Romer: And who else could register them?

Lord Justice Cotton: Is there any opposition by members of your lodge?

Mr. Romer: Yes, my lord. The plaintiffs are the trustees of the Order, the trustees of the district and some minority members. They have all their parties right, and we really want to have the question decided. It is a very important question for us.

Lord Justice Cotton: Of course the rights of the Order and the rights of the district may be very different.

Mr. Romer: No doubt, very different, my lord.

Mr. Justice Fry: You have not got quite to the bottom of the history of the foundation of these bodies yet.

Mr. Romer: I have got to the foundation of my papers, my lord.

Lord Justice Cotton: Are you prepared, Mr. Cozens Hardy, with the information as to the early history of these societies.

Mr. Cozens Hardy: I think so, my lord.

Lord Justice Cotton: Then I think it might be as well to let you commence your case, and that we should give Mr. Romer the right to reply.

Lord Justice Fry: Would that assist you, Mr. Romer.

Mr. Romer: Very much, indeed, my lord; because I really do not quite know their history from the materials I have before me.

Lord Justice Fry: Of course it is very awkward to have to open a case when one does not quite understand the whole of the facts.

Lord Justice Cotton: Then, Mr. Hardy, you will commence to-morrow for the purpose of showing us on what ground you contend that these lodges are bound.

Mr. Cozens Hardy: It being understood that the other rules are required by your lordships, although they were not put in evidence in the court below?

Lord Justice Cotton: Yes.

Mr. Romer: Perhaps the other side would also assist us by admitting this, which may be important, that, from time to time, there have been secessions, that lodges have often seceded, and that it has never been sought to be prevented.

Mr. Cozens Hardy: Upon terms.

Mr. Romer: And that the first rules which they passed for the purpose of preventing secessions except on terms were those rules which were passed after the passing of the Act of 1876.

Mr. Cozens Hardy: If your lordships please, this is an appeal which I am anxious to press before your lordships as far as I can. It is an appeal which really affects more than half a million of people and six millions of funds, so your lordships will pardon me if I give you, with some little detail, documents which are material in the case. We have now got the original dispensation of the lodge, which was founded in 1830. This is a copy of the dispensation which I think was handed up to your lordships yesterday, and it contains some things which are important, as showing what is the real relation between the parties in this case and all the other cases of the lodges. My lords, my propositions, shortly, are these: That all the members of any of these lodges are members of the Order arranged in a lodge, which lodge is subject to the district; but every member of the Order, in whatever lodge, is bound to obey and comply with the rules of his lodge, of his district, and of the Order. In fact, my lords, the district is very much of a guarantee or an insurance to protect the members of one lodge which may be deficient in funds, so that the others may help; and the Order, on the other hand, is a sort of protection or insurance for one district against another, each lodge being represented in the district, and each district again being represented in the Order.

[The dispensation was handed to the court.]

Lord Justice Fry: I suppose before 1830 there was some rule which gave the power of these so-called dispensations. Is that so?

Mr. Cozens Hardy: There were no rules in the sense of any registered rules, or matters which are on record. Since yesterday I have been looking into the Acts of Parliament on the subject, and, so far as I can make out, I cannot say there was any sort of legislation upon this before the Act of Geo. IV., c. 76, which authorises the formation of the society. The objects authorised by that Act were substantially those of the friendly societies.

Lord Justice Bowen: What is the date? That would be before the formation of the rules.

Mr. Cozens Hardy: That Act recites two prior Acts which I have looked at, and which do not seem to be material for the purpose. That authorises the formation of the society with power to make and alter rules, and there was some provision under which certain rules might be certified before a justice of the peace. That was not compulsory, and it was not an Act which was apparently very operative in the sense that very few societies came under it. The next Act which I will mention was the Act 4 & 5 Wm. IV., c. 40. That altered the mode of certifying the rule, but did not otherwise materially alter the state of affairs. The next Act is the 13 & 14 Vic., c. 115, which recited the former Act, and by the second section it says this: "It shall be lawful for any number of persons to establish societies or branches of the same under the provisions of this Act for the purpose of raising, by voluntary subscriptions of the members thereof, with or without the aid of donations, a fund for any of the following objects." Then the objects are specified: they include the purposes of this friendly society, and some other objects. There is power by section 4 of that Act to alter or amend rules. Section 6 says until the rules have been duly certified by

the registrar the society is not to be deemed legally established under the Act, and it is not to have the benefit of any of the provisions of the Act; and by section 7 the registrar is to give a certificate. By section 34 no dissolution or termination of the society under this Act can take place without certain consents, and without provision for anybody who has any claim upon the funds of the society. Then section 46 says every society established under the former Acts may be entitled to the benefit of these Acts if they register. Then by section 49 the term "society." This Act includes every branch thereof, recognising therefore, even at that time, that the matters with which the legislature were to deal were societies which had branches.

Lord Justice Cotton: Can you tell us what the branches are?

Mr. Cozens Hardy: No, my lord. It is simply: "It shall be lawful for any number of persons to establish a society or branches of the same," that being the word in the interpretation clause. "The society shall include every branch thereof."

Lord Justice Bowen: You say the society was not to be deemed to be established until the rules were certified?

Mr. Cozens Hardy: They were not to be deemed to be established under this Act, and were not to have the benefit of the provisions of this Act. They did not acquire the right, for instance, of suing their officials and of getting various privileges of that kind until they came under that Act. Perhaps your lordship will allow me, although it is a little out of the order of date to tell your lordship that it was under the Act that in the year 1851 the Order registered its rules, and by the rules then registered there was a provision which I will not more discuss now, except to say that the rules of the Order then registered contain this provision, that lodges in the United Kingdom should be registered under the Act. That Act continued until there came the Act of 1855.

Mr. Romer: Which in substance repealed 13 & 14 Vic.

Mr. Cozens Hardy: Preserving, of course, every society which had been formed and established under the Act, saving all existing rights just the same as though the Acts had not been repealed; and the rules are to be deemed valid and enforceable until altered or rescinded under this Act. Then it contains the provisions to which my friend referred yesterday, not using in the body of the Act, as before, the word "branch," but simply "it shall be lawful for any number of persons to form and establish a friendly society under" the Act, but it contains this provision in section 49 of that Act to which my friend did not refer —that the word "society" shall extend to and include every branch of the society by whatever name it shall be designated. I told your lordship that the rules of the Order require the lodges to be registered. There was some opposition to this, and the particular lodge in question, the Caledonian Lodge, was for a time suspended for non-compliance with the requisition. They at last, however, acceded to this request, and they did register the rules of the lodge, the registration taking place on the 8th March, 1873.

Lord Justice Cotton: That is 18 years after the Act of 1855.

Mr. Cozens Hardy: Yes, my lord, 18 years. 1873 was the date of the registration. Undoubtedly all these rules had not been enforced: they

were called into operation gradually. They did suspend the lodge, and then ultimately this registration took place. That, my lord, is the only registration of the lodge. They never were registered under the old Act: that is the first and last registration of the lodge. Having given your lordships those dates, I think it would be convenient that I should now invite your lordships' attention in some detail to what, in our view, are the relations of the parties under these various instruments. This is common ground to us. Every member of the society, to whatever lodge he belongs, gets this certificate, which is at the beginning of all the rules.

Lord Justice Bowen: These rules have been the same, I suppose, since 1851?

Mr. Cozens Hardy: This form which I now speak of is the same.

Lord Justice Fry: It is not in the 1876 rules at all, apparently.

Mr. Cozens Hardy: No, my lord. What does this say? "This is to certify that brocher" and so on "was admitted a member of"—what? "The Independent Order of Oddfellows, Manchester Unity Friendly Society, by initiation in the branch lodge, No." so and so, "and (blank) district;" that is to say, what he became a member of, is the Order, by initiation in a lodge which belongs to a certain district. Now, my lords, initiation is a term which is described in the rules, and for which there is a form. That form is as follows——

Lord Justice Cotton: Is that in the older rules or the last rules?

Mr. Cozens Hardy: It is in every lodge.

Lord Justice Cotton: So I understand.

Mr. Cozens Hardy: What I have, my lord, is this: "New making, or initiation charge, adopted by the directors, and authorised by the Shrewsbury A.M.C."—that is, my lord, the Annual Movable Committee —"1860, amended in 1868." It is enforced in every lodge in this Order.

Lord Justice Cotton: Shall we find it, in fact, in the rules of the lodge in question?

Mr. Cozens Hardy: The important point is, that every member who is admitted in the lodge is initiated in this way.

Lord Justice Cotton: Is that as a fact the course in this Caledonian Lodge?

Mr. Cozens Hardy: Yes, my lord, it is the fact in this Caledonian Lodge. This is the form which he has to go through. It begins, "One conductor to retire"——

Lord Justice Bowen: What are you reading from?

Mr. Cozens Hardy: What is called "The new making, or initiation charge," which every member has to receive. It is what he has to say.

Lord Justice Bowen: Is that a book which is given to each member when he joins?

Mr. Cozens Hardy: It is. The lecture master is one of the officers; he asks certain questions and gets certain answers, and when the candidate for initiation comes in, he is asked this. (Mr. Hardy then read the promise to be made by the candidate for admission.) And he answers, "I do." That, therefore, is the mode or the form by which he becomes a member, and that is the obligation under which he is admitted a member, namely, an expressed obligation that he will conform to all rules duly passed by the authorised committee of the lodge, district, or Order. This is what has been in force since the date of the registration of the lodge, at all events, and it has been in no way altered since.

Lord Justice Fry: I see the rules of each lodge require initiation.

Mr. Cozens Hardy: Yes, they require that, and this is the form.

Lord Justice Fry: I see both the rules of the Order and the rules of the lodge require initiation.

Mr. Cozens Hardy: Yes, my lord, and the rules of the district, too. Now, my lords, I am afraid I have rather gone out of the chronological order to which I wanted to adhere.

Lord Justice Cotton: Mr. Romer has not instructed us about these documents. Are they in evidence?

Mr. Cozens Hardy: No, my lord, but we agreed yesterday that their case should be tried on the full facts. My lords, I should desire to come for this purpose to what is called the dispensation of the lodge. We have a book which shows the grant; it is a book which has been rebound because it was so very old—the dispensation book, it is called. It has the grants and dispensations of the various lodges in their various order. This particular lodge is numbered 418 in this book. It is in this way: "No. 418, Caledonian Lodge, Orrell, Doff Cocker," which I believe is the name of the hamlet, "Halliwell, near Bolton, No. 10, Bolton Circuit," which is the district. Then in the proceedings of the quarterly committee of March 8th, 1830, of which also we have a copy, it was resolved, "That the Bolton Circuit of the Manchester District be allowed to open a lodge at the house of Elizabeth Orrell, Doff Cocker, near Bolton, to be called the 'Caledonian Lodge.'" That, I believe, is the origin.

Lord Justice Cotton: You have told us about the registration of this Order. Have you told us when the Order was founded, and of what it consisted?

Mr. Cozens Hardy: We have no rules at all, I should tell your lordship, prior to 1851—none prior to the 1851 registration. They are not forthcoming, and must be treated as non-existing. I have not got them, and, so far as we are aware, there are none in existence.

Lord Justice Cotton: Does anybody know how the Order began—how it was established, and how it began to have these lodges. One has a difficulty in understanding what the meaning of the dispensation is, unless one knows what the body is that was supposed to grant it, and to whom it was supposed to be granted.

Mr. Cozens Hardy: I think, my lord, that will appear from the document itself. It was a society founded for the purposes then authorised by the Act of Parliament, that is, for granting relief to sick members, benefits, and so on, and that is simply the mode in which those members were classified and arranged into various small bodies, for the purpose of more conveniently governing and managing their affairs, so that members living in a particular locality might meet together and manage their own affairs. They had their own offices, and could provide for their own wants in a better manner than a more central lodge could.

Lord Justice Cotton: Your case is, that all those who are so authorised, and have got dispensations, are already members of the Order, and were only, as members of the Order, allowed to a certain extent to separate themselves in a separate lodge.

Lord Justice Fry: They were constituted a body, with special power to add to the members of the Order.

Mr. Cozens Hardy: Yes.

Lord Justice Bowen: When a man joined the lodge he was initiated by the form of initiation which you have given us, even if it was a district lodge.

Mr. Cozens Hardy: I ask your lordship to bear in mind that a man does not join the lodge.

Lord Justice Bowen: No; he joins the Order. When the lodge admits him, whatever the ceremony is, it consists of initiation into the Order.

Mr. Cozens Hardy: Yes.

Lord Justice Bowen: And it has always been so.

Lord Justice Cotton: That is an important fact; and the question is, do both sides agree to that fact?

Mr. Cozens Hardy: The form of dispensation shows it.

Lord Justice Bowen: I take it there will be no doubt about it, because it must be a very common thing to have these members admitted.

Mr. Cozens Hardy: There is no doubt about it, my lord; because, I think, at the date 1830, under the form of dispensation itself that appears. It reads: (Dispensation read.) That is the form, clearly showing, I submit, on the face of that document, that the initiation was an initiation into the Order. They were simply members who were, by the consent of the Order, in it for certain limited purposes, those purposes including the obligation to comply with and observe the rules and regulations of the Order. Now, my lord, that is the state of things. I have not got the 1851 rules, but I have the rules which were in force at the date of the registration of the lodge. I am talking now of those that were first registered. I think that is the most convenient mode of dealing with them. The district rules were registered next, and then the lodge rules. I do not think they differ in any material points.

The first rule in 1871, I do not need to trouble your lordship with. There was some alteration registered in 1871, as appears by the certificate of the Registrar.

Lord Justice Fry: Alterations from the registration of 1851?

Mr. Cozens Hardy: Yes. There were some amendments made on the 14th June, 1871. Rule 2 in the 1871 rules is rule 1 in the 1884. I will read them from the 1871 rules. It is that it shall be governed by a committee called the Annual Movable Committee, composed of deputies appointed by districts.

Lord Justice Fry: Before that, we have the constitution.

Mr. Cozens Hardy: The first rule in 1871 is merely the name and place. I did not trouble your lordship with that.

Lord Justice Fry: But is not the constitution of the last importance?

Mr. Cozens Hardy: I will read it, my lord. "This society shall be called the Independent Order of Oddfellows Manchester Unity Friendly Society; and shall carry on its business at the offices, 97, Grosvenor Street, Chorlton-upon-Medlock, in the city of Manchester, county of Lancaster; and when the place of business is changed, or a dissolution of the society takes place notice thereof shall be sent to the Registrar." The 1866 rules are, I am told, the earliest your lordship has got.

Lord Justice Cotton: The 1866 rules are annexed to the certificate of the Registrar in 1851.

Mr. Cozens Hardy: The first point is as to the 1851 rules as altered in 1866.

Lord Justice Cotton: You are going to later than that.

Mr. Cozens Hardy: Yes, my lord, I am going to rules which were in force when the lodge was formed, and was registered under the Act. It was registered in 1873.

Lord Justice Fry: Then the constitution we have looked at.

Mr. Cozens Hardy: I shall be quite content with that on my friend's argument. The stress of his argument is, that by the registration they became a different body. That is why I take 1873, because I shall be very much content to rest it on the registration, unless something happens. Rule 2 says: (Rule read.) Rule 3 does not seem to be very important.

Lord Justice Cotton: What is meant by "any branch of this society shall be at liberty to adopt a system of nomination in accordance with the 18 & 19 Vic."?

Mr. Cozens Hardy: I think it is simply this, that any person having a right to benefit in the way of funeral money may in his lifetime, nominate a person to get the benefit of it. That really is what that meant. Now rule 4 is the same as the rule at the bottom of page 1. (Rule read.) Those provisions are really identical with what your lordships will find on pages 5 and 6 in the rules made in 1884. There is, in fact, no substantial difference, and scarcely any verbal difference. Then

comes rules about the trustees and treasurer, which I do not think I need read. I ought to read that, perhaps, which is at bottom of page 6: "Annual Movable Committee.—A general meeting," etc. (Rule read.) Then there is "Order of Business," which I do not think I need refer to, except this: "A committee of nine deputies, called the relief committee, to investigate all applications for relief from districts on their own behalf, or on behalf of lodges or members;" showing that the very essence of this Order is somewhat in the nature of a mutual insurance society. Then there comes provisions about the officers of the Order; then, "Board of Directors," at page 10, that is as to the mode of electing it; then the trustees of the society, the treasurer of the society, auditors' accounts; and then, at page 14, your lordships will find the dispensation to open lodges—that is, as to the mode of application, and what is to be done with reference to it. Then comes a series of provisions for what are called Unity members. I think your lordships should know what that means. Unity members are members almost by accident, I may say; the accident being this that if the district has become bankrupt, and if certain members are really thrown adrift——

Lord Justice Cotton: Mr. Romer told us that.

Mr. Cozens Hardy: It is not in the original contemplation of the scheme at all. A man becomes a district member if his lodge fails; he becomes a Unity member——

Lord Justice Fry: He is a member of the Order without being a member of any district or lodge. That is what you mean.

Mr. Cozens Hardy: Yes, my lord; and he is to pay exactly the same subscription, unless there being no lodge or district to which he can pay, it is to go into the funds of the Order. That is made quite clear by the rule at page 15. His benefits are to be the same. Then there is the definition of "district," which is on page 18.

Lord Justice Cotton: They define, as far as may be, the limits within which each district is to extend.

Mr. Cozens Hardy: Then, "all lodges shall belong to the district by which they have been opened or since apportioned by the A.M.C."—and then there is a certain manner of changing with consent. Then it says district meetings are to be held. Then there are district officers, and there are the special duties of the officers. Then, if your lordships will look at page 23, you will see there are the provisions which I mentioned before. It says the rules of all lodges and districts in the United Kingdom shall be registered in accordance with the Friendly Societies Acts. "Any lodge refusing to have their books examined shall, for the first offence, be fined the sum of ten shillings; for the second, twenty shillings; and for the third be suspended until they comply." That follows after the provisions which I have not read to your lordships. Providing for the audit of the accounts. The accounts are audited, and if the accounts and books are not presented, then there is, first, a fine——

Lord Justice Fry: What is the meaning of suspension?

Mr. Cozens Hardy: It means this: A lodge which is suspended does not get the benefits. In the case of a wealthy lodge like the present,

that might not be a punishment, but it might be an advantage. However, it conveys a certain stigma on the lodge, and it has this effect: that members from a lodge so suspended will not get the privileges of being taken into any other lodge in any other part of the country, and will not get certain privileges or get a clearance, as it is called, for travelling members. Of course, in the case of a poor lodge, suspension is a serious matter: in the case of a very rich lodge, it might not be a serious matter, except so far as public opinion bears upon it, and no doubt it has been found effective in that way. Then, "If a lodge refuse or fail to comply with any resolution passed at a district meeting the officer shall give them one lodge night's notice; and if they persist in not complying, any two district officers being present shall have power to suspend the lodge until they comply. If the lodge be dissatisfied with the proceedings of the district officers in suspending them, they shall have power to appeal to the district meeting." Then there is this about the district funeral and management fund at page 24, which is important. Each district is to form a funeral fund and a management expense fund. "From the management fund shall be paid all necessary expenses of the district, deputies to the Annual Movable Committee and Unity levies, and it shall be raised by an equal contribution on each member." That is to say, funds for working this whole Order are raised by means of contributions in the first instance levied by the district and is not a poll-tax from every member, and they comprise not merely the costs of the district, but also the Unity lodge—that is to say, the central body; and separate accounts have to be kept. Then I pass on to "initiation." At page 28 it says how a candidate has to be initiated. The form is not given in these rules. Then there are certain optional scales for the rate of contribution for members, according to the rate per week they pay. Then there are privileges and payments under suspension. The privileges cease when a member is suspended for misconduct. He may be re-admitted. Then there are elaborate provisions for what are called "travelling cards," which, in fact, amount to this: that when a member gets a clearance from the lodge and is going about in search of work he is entitled to go to another lodge, and, under certain circumstances, get help from them. All that, in the point of view which I am submitting to your lordships, is important as showing that a member of his lodge has a right to claim certain benefits from other lodges of the Order, whether in his own district or not. Then there is "travelling relief," as it is called, or sickness when travelling. Then there are provisions for clearances or transfers from one lodge to another. When a member removes, say from London to Manchester, he can be taken over from one lodge to another.

Lord Justice Fry: And then he gets the benefit of his payments to the other lodge.

Mr. Cozens Hardy: Yes, my lord; because his payments are not to the lodge but to the Order. He always was a member of the Order, and he may go from one lodge to another; with this provision, that he is not to be entitled to a clearance more than once in twelve months, unless he goes abroad. Then, on page 44, there is a provision for lodges: "Branches called lodges shall be formed by the directors under the 4th section of rule 1 by granting dispensations. They shall be bound by these rules, but can make such additional rules as may be required;" and then they refer to section 4 of rule 1.

Lord Justice Bowen: What is the number of that.

Mr. Cozens Hardy: That is rule 49.

Lord Justice Bowen: I thought that was in rule 4.

Mr. Cozens Hardy: So it is, my lord. It refers back to it. Rule 4 says generally that the board of directors are to establish branches called lodges, "as herein provided for." Then rule 49 says: "They shall consist," etc. Then there is a provision as to the mode of election and the time of meeting; and then there is this, at the bottom of page 44, which I think of extreme importance: "No lodge shall remain in connection with this society who adopt rules not in conformity with these rules; any lodge breaking this rule shall, for the first offence, be fined five guineas; for the second, be expelled; the fine to be paid into the district funds." Then there are provisions for a paid secretary, auditors and inferior officers. Then "summonses" and "method of business." Then "regulations for payment of contributions;" the lodge being prevented from charging less than the sums provided by these rules for members of the Order. Then it says separate accounts are to be kept; and then, at page 62, there is this provision about appropriation of funds: "No lodge shall be allowed to divide its funds or break up the lodge, except in conformity with the 13th clause of the 18 & 19 Vic." Then there is to be a revaluation, with power to directors to levy further contribution in case of deficiency. Then there are provisions, at page 50, for the payment of contributions into other lodges; that is to say, if a member of this Caledonian Lodge happens to be residing in London temporarily, he may pay his contributions into such London lodge, who will remit it to the Caledonian Lodge. Then there is a provision for receipt of sick pay when residing at a distance; for instance, he can go to the lodge where he temporarily is. There are rules to be observed during lodge-hours. Then there are what are called lecture books, and there is what is called a "Purple Lecture." What that means I do not know. I suppose it is one of the rites of initiation. Then there may be a widow and orphans' fund, but that is not necessary. Then there is a provision about the settlement of disputes by arbitration. The district is to appoint certain arbitrators, with an ultimate appeal to the Order; that is to say, to the Order itself. Then there is a provision in rule 79 for a dispute between members of different lodges—for arbitration for that.

Lord Justice Fry: I suppose that is the arbitration referred to in the rule—the final arbitration.

Mr. Cozens Hardy: Yes, my lord, I think it is. Then, my lords, there is a clause as to appeals from decisions. You may go to the central Order by way of appeal. Then comes a provision, at page 61, for the alteration of rules. I think that is very important.

Lord Justice Bowen: What is the number of the rule?

Mr. Cozens Hardy: It is rule 86, my lord; but they do not go consecutively. The numbers are very perplexing. There is an index attached to it. The Annual Movable Committee, which makes and alters the rules, your lordship will remember, is constituted of representatives from districts; and any alteration of the rules of the Order must

be started, so to say, by a district. "Any lodge wishing to alter any existing rule or propose a new one shall submit the same to a meeting of the district."

Lord Justice Bowen: Do you mean an existing rule of its own, or an existing rule of the Order?

Mr. Cozens Hardy: The Order, I think it is, my lord. "Any member wishing to alter any existing rule of the Order," etc. Then they provide that if the notice is not in conformity it will not be admitted. "No lodge or district rules shall be made, altered, or rescinded, except at a summoned meeting of the lodge or district." In answer to Lord Justice Bowen, it is obvious there is some confusion here between the rules of the Order, lodge, and district. Possibly I was going too far in saying that applied to rules of the Order; because the final words clearly apply to rules of the district as well as the lodge. "These rules,"—and I have to call your lordships' attention to these words—"together with the rules of the branches called districts and lodges, shall be published and sold to the members (every member on entrance to be presented with a copy)." Those are the rules in force at the time when the lodge was registered. Now, my lords, the next material thing is, what were the rules of the district of which the lodge was registered as a part in 1873? Those rules were registered, first of all, in 1852; but they were altered in 1860. I think the original registration—the first registration—was on the 20th of February, 1852.

Lord Justice Fry: That is the Bolton District?

Mr. Cozens Hardy: Yes. When you come to the certificate of registration of the lodge, your lordship will see that in all the other documents they are treated as part, and it is common ground that they are part of the Bolton District. There is a power to alter the district, and probably the Manchester District got too large, as the number of its members increased. There are, of course, rules for the government of the Bolton Branch. It begins with the name, constitution, and objects: "That this society shall be called the Caledonian Lodge, and shall form an auxiliary branch of the Bolton District of the Independent Order of Oddfellows, Manchester Unity, Friendly Society; and shall have for its objects the raising of funds by entrance fees, subscriptions of members, fines, donations, and by interest on capital for the following purposes." I will read this shortly, but your lordships will observe that among the objects are included the granting of temporary relief to lodges or members in pecuniary distress, and "the raising of funds by entrance fees and subscriptions of members for granting assistance to widows and orphans of deceased members." Then comes this: "The whole of the objects and rules of this district branch shall be carried into effect, etc. Then there is a provision for the management of the district, the place of business, the application of funds, appointment of treasurer, auditor, and district committees; and, at page 8, rule 8, it says each lodge is to appoint a delegate. If it does not appoint a delegate it is fined. Then there are provisions for lodge business, and a provision that district officers are to be elected according to the general rules of the Order. Then there are provisions with reference to travellers, and there is a provision for the purple lecture. Then there is the district fund, which is to be under the management of the district officers. There is a provision for dispensations to open new lodges and then it clearly defines the lodges.

Lord Justice Cotton: They become members of the district, then if the district falls they go to the Unity.

Mr. Cozens Hardy: Yes, my lord. More or less the lodges o district are mutual insurers; and on the other hand, the district i mutual insurance.

Lord Justice Fry: The mutual liability is on the district, and secon on the Order.

Mr. Cozens Hardy: Yes, with apparently a power for the Order help the district, I suppose limited according to the subventions them. There is some provision for disputes, and then there i provision for the alteration of the rules; and each member is to furnished with a copy of these rules free of charge. Your lordsh now, I think, are in possession of what was the Order and what was district at the date when that took place which, my friends say, had effect of making this lodge independent. They say it was a volunt connection, which could be determined at any moment. Now I wo ask your lordships to allow me shortly to refer to the rules of the lod It is to be called the Caledonian lodge; and what is it to do—it sh form what? "An auxiliary branch of the Bolton District of Independent Order of Oddfellows, Manchester Unity, Frien Society;" and the Registrar's certificate, which your lordships will f at the end of the rules on page 27, which is the foundation of the title the lodge, says this: "I hereby certify that the foregoing rules of Caledonian Lodge, No. 418, Bolton District, Independent Order Oddfellows' Friendly Society, held at the Ainsworth Arms," and so "are in conformity with law," etc. It is impossible, when y lordship has before you the rules of the Order and district, to av seeing that when this lodge applied to be registered, they w registered as a branch of an existing district governed by certain ru which rules incorporated all the rules of the Order; and they can possibly say, I submit, that they did not by that undertake obligation to the other members of the Order, wherever they may situated, to their own district and to the governing body of the Ord They became a branch of the Bolton District. By the rules of district it is expressed in the clearest possible language that all the ru of the Order for the time being, including amendments, expressly are bind the district; and when you look at the original rules of the Or you find that they themselves carry with them a power of alteration a amendment, so that it would not be even necessary to find in district rules an express declaration that they should be bound by rules in the amendment.

Lord Justice Bowen: The Act of Parliament under which th registered provides that the rules of the existing society, which inclu the branch, shall be sent to the Registrar, and shall be certified by hi

Mr. Cozens Hardy: Yes. Thus far there was no provision which terms contemplated secession. It did not in terms provide against They did not use the term "secession" except in one clause, which is impose a fine upon any member bringing about secession. But in rules of the district, as altered by law, when it was registered under Act of 1875, there is an express provision for that purpose. The distr registered under the Act of 1875, and in its registered rules the first r is for all practical purposes identical with that which I read except

existence of lodges and so on. I do not trouble your lordships with it, because I think there is no material difference. In rule 10 there is an express provision. (Rule read.) I think your lordships will find that it is in the same words with page 8 as to secession and breaking up of branches.

Lord Justice Bowen: May we take it it is the same?

Mr. Cozens Hardy: Yes, my lord, subject to what my friend says.

Lord Justice Bowen: In the original initiation or in the original rules you said they undertook to comply with the altered rules. When a member comes in he promises to conform to all the rules.

Mr. Cozens Hardy: Duly passed by the committee of the lodge, district, or Order.

Lord Justice Bowen: So that when these rules were passed the existing members, and not merely those who first came in, were bound by their original promise of initiation.

Mr. Cozens Hardy: Yes. That they were duly passed by the Annual Movable Committee is concluded by the Act of Parliament. The Injunction which has been granted is simply to restrain them from dividing according to that rule. If there is any question upon the form of injunction, that is all we ask. The rest is merely ancillary. If we are right in principle I do not think my friends would have any objection to the form of the Order. If there is, I will deal with that, but all we desire to raise is, aye or no, had they the right to secede upon the terms of this bargain? My friend says that he does not, with reference to rule 10 of the district, admit that his lodge is a branch of the district. I do not understand how my friend makes that out.

Lord Justice Cotton: But the Order has a similar rule.

Mr. Cozens Hardy: Yes, my lord. I do not really follow my friend.

Lord Justice Fry: Is there any doubt, as a matter of fact, that the Caledonian Lodge is a branch of the Bolton District?

Mr. Clare: I understand the branch is defined by the Act of 1875, and we say that we do not come within the terms of that definition. That is the point. We say that this only applies to legal branches having regard to the provisions of the Act of 1875, and it does not apply to those lodges which have refused to register. I only want to guard myself against being held to admit that.

Lord Justice Bowen: I thought you did register in the end.

Mr. Clare: No, my lord, we did not register. We have been suspended for not registering.

Mr. Cozens Hardy: We are not proceeding at all against this society as a branch entitled to the privileges of the Act of 1875; they are not that. I do not quite appreciate my friend's point.

Lord Justice Fry: They never came under the Act of 1875.

Mr. Cozens Hardy: No. I am much obliged to my friend for saying that he does not admit that "branch" means "lodge;" but I must leave my friend to deal with that. We only ask all we have got, except complying with the rule.

Lord Justice Cotton: As I understand you, you say that the secession and breaking up rule in the Order rules, and also in the district rules, are all in accordance with the provision as to altered rules in the Order and district rules.

Lord Justice Bowen: We may take it as a fact, I suppose, that there is no member of this lodge who is not initiated by a form of initiation in which he promises to observe the rules of the Order.

Mr. Cozens Hardy: Yes, my lord. And that "lodge" does not mean a lodge which has been registered as a separate society is perfectly clear, I submit, under the rules of the Order under the Act of 1875. I say that power does not apply to branches which are registered, but it applies to branches which are either registered or unregistered. I say that is clear if you look at the rules under the Act of 1875. First of all the Order is defined as being in districts and lodges as herein divided, and then you find this in sub-section 6: "All lodges and districts in the United Kingdom shall be registered in accordance with the Friendly Societies Acts," that is to say, they are lodges, nevertheless they are members of the Order whether they are or are not registered, they are still branches.

Lord Justice Bowen: This branch is registered under the Act of 1851.

Mr. Cozens Hardy: Yes, and the Bolton District by re-registering under the Act of 1855 did not cease to be the Bolton District; it was simply the change of machinery; it was not simply a destruction of the old body. I think I will leave my friend to deal with that part of the case if he can make anything of it. Now I think I have put your lordships in possession of what my view is upon the material documents of the case. I do not think it will be necessary to read the evidence, as to which there is really no dispute. This is a rich lodge, which no doubt ought to bear some of the burdens of the weaker lodges; and it is minded to say it will go out with all its own funds, and leave the other lodges to go on. If they can do that—if your lordships decide that they can do that—the effect upon the whole Order must be most serious. The very essence of the thing is that the stronger lodges should help the weaker, and it is put an end to in that case. I ought perhaps to mention this to your lordships, that from 1838 downwards—down in fact to 1884, when this difference of opinion took place—delegates were regularly and invariably appointed by this lodge to the district. They were present at the meeting at which the rules of the district were passed—the rules which I have read to your lordships, including the rules which were registered under the Act of 1875. They have taken the fullest share in the management and control of the affairs of this society, and have been a party to the affairs of this society. You have this, that every member of the lodge received a copy of the rules both of the Order and of the district; that he in terms on his initiation agreed to abide by them all; and that being so, I will submit that it can make no difference whatever that the lodge was to some extent brought within the operation of the Act of 1855. That Act in the definition of "society" includes a branch. It will be a difficult question to know what that

means, but at least if your lordships hold that every member of this lodge has entered into a contract with every other member of that lodge that the funds of that lodge shall be applied in a certain way, your lordships would not allow the mere fact of registering their rules to get rid of the contract which had been entered into with reference to the funds of that lodge. In the view which I am submitting to your lordships that registration is really of no effect, the obligations of the members in relation to the funds are still in force, and the funds can only be applied in accordance with the rules of the Order. I will ask my friend, Mr. Buckley, to read the judgment of the learned Vice-Chancellor.

Mr. Buckley: If your lordships please, I will read the judgment of the Vice-Chancellor at once, before saying what I have to say upon the case. [The learned counsel read the judgment.] Then his Honour granted the injunction in the exact terms of the order your lordships have before you. Now, my lords, I think, for the purpose of arguing this case, it is not necessary to consider minutely the very complicated nature of the Acts of Parliament under which these societies are formed. To my mind nothing at all turns upon the Act of 1875 or 1876, and but little turns on to the previous Acts, except that your lordships must remember this: These Acts of Parliament are Acts which do not incorporate these societies at all; they are simply Acts under which these associations are entitled to carry on these societies for mutual benefit. You have not got the registration of the Order as one corporation and the registration of the lodge as another at all. You have only got three bodies, each of which is a separate body under the Act of Parliament, no doubt, but which, after all, only consists of an aggregate of individuals. Then, my lords, what is every member of this lodge? He is, I would say, a member of the Unity. He stands very much in the position of a man who was a member of one of the universities. It is true he is a member of his college; his college is a member of the university, and he is a member of the university, because he is a member of the college, and the university is an aggregate of colleges.

Lord Justice Cotton: I do not think your analogy will hold, Mr. Buckley. You are a member of the university entirely independent of being a member of the college.

Mr. Buckley: I am obliged to your lordship. I did not express myself happily.

Lord Justice Bowen: Saying you are a member of the bar because you are a member of a circuit would do, but I think the university analogy is not quite accurate.

Mr. Buckley: What I meant is this, we have many systems in which a member of the limited or smaller body is just as much, and in one sense more, a member of the larger body than he is of the smaller. In this case the member of the Unity is in that sense probably a member of the association. By way of government no doubt the Unity controls the district, and the district controls the lodge; but the person who is a member of the lodge is only a member of the lodge because he is a member of the Unity. It is the Unity that admits him to membership in the body as a whole, and it is the Unity which enables certain members of that large body to form a smaller body; and the smaller body only owes its existence to the fact that it is authorised by the larger

one. Now, my lords, with regard to registration under the statute, and whether the lodge or the district becomes a separate body in one sense under the Act of Parliament, there is nothing in that at all to prevent every person who is a member of the society from being a member of the larger body. The whole matter turns, to my mind, upon contract, rather than upon registration under the statute. The question for investigation is, what are the rights which as between themselves these individuals have taken upon themselves by way of contract? Now, you must look at the instruments which form the foundation of the history of this matter. I do not think there can be any doubt as to what the contract was. A. B. is anxious to have these benefits; he is admitted by initiation as a member of the Unity into a lodge. That is the way he gets into the concern. The lodge itself is a something which is created by dispensation by the Unity, so that that which he becomes a member of is the Unity then, as distinguished from the subsidiary thing. What are the relations as between the member and the Unity, district and lodge? As between themselves they are correlative the one with the other. So long as the lodge exists, the man pays his contribution, it is true, to the lodge, and the lodge pays a sum to the district. In the same way there is a contribution of, I think, a half-penny per head to the Unity. If a member's lodge comes to an end, in the first instance, he goes upon the district, and he is entitled to payment. If the district ceases he goes to the Unity and he pays his contributions and receives his benefits from the Unity. He has rights of clearance from one lodge and can go to another lodge; he has the right to go temporarily to a lodge in another district. He has all sorts of rights not against his lodge alone, but against the larger body, of which his lodge is a portion. If that is so, my lords, then it appears to me that nothing really turns on the fact that the lodge is registered as a separate society under the Act of Parliament. There is nothing to prevent all the members of that society, if so constituted, being at the same time members of the larger society, and nothing could prevent all the members of the larger society being members of another larger society, because you are not dealing with corporations at all, but simply with associations of individuals. That is the view we present to your lordships of the right of these parties *inter se*. Now, my lords, what took place? The lodge says, that there was something done in the way of expulsion. I do not know whether my friends are going to rely upon this, but I may as well tell your lordships how the facts stand. Whit-Monday is the day when the Annual Movable Committee meet; it is the gala day of the Order. On Whit-Monday, 1883, they met. Your lordships remember how that committee is constituted. The lodges send delegates to the districts, then the districts elect delegates to the Annual Movable Committee, and the Annual Movable Committee is ultimately elected by the members of the lodges.

Lord Justice Fry: That is the governing body.

Mr. Buckley: Yes, that is the governing body. On Whit-Monday, 1883, the Annual Movable Committee met, and they passed a resolution that every lodge should register, as a branch, by the first of May, 1884; that was the direction they gave to the other lodges in their society.

Lord Justice Fry: Is there any question as to the intention or desire of the appellants to secede?

Mr. Buckley: No, my lord; they say it is a matter of right. They say, "Our connection was altogether voluntary from the first, and we wish to sever it."

Lord Justice Fry: Then is it necessary to go into the details?

Mr. Buckley: No, my lord; except, as I say, if my friend raises this. It is raised on the evidence. "You have expelled us: it is not that we are going to secede; but you have expelled us." There is no foundation for that. My lords, all that was done is this: The Annual Movable Committee made this direction to all the lodges; the lodge refused to comply with this; then the Annual Movable Committee simply suspended them, saying, at the same time, that they hoped the suspension would be of brief duration.

Lord Justice Bowen: "Suspension," as I assume from the use of the term, does not destroy the status of the lodge members in the Order, except for the purpose of suspending their enjoyment of privileges.

Mr. Buckley: That is all, my lord. It simply suspends them: that is to say, they could not get a clearance.

Lord Justice Bowen: They still enjoy their privileges.

Mr. Buckley: Yes. They were suspended, and ultimately they came away. That resolution was passed by the Annual Movable Committee on Whit-Monday, 1883.

Mr. Clare: My lords, I should like to add to the evidence that has been given, and I assume there will be no objection to my adding to the evidence these facts. Your lordships know there have been many Royal Commissions from time to time for the purpose of inquiring into these societies. I have now before me a report, which was made in 1874, which seems to have led to the passing of the Act of 1875. It appears from the reports, that from time to time various lodges have seceded from the different societies, including the particular society of the Manchester Unity in this case. I cannot say that it appears from the report how they came to secede, or upon what terms they seceded, but they undoubtedly did secede. The importance of it really seems to be this, that the Commissioners report, as far as they can make out, that there is no legal connection up to 1875 between the Unity and the district and the district and the lodges.

Lord Justice Bowen: You state the fact you wish us to accept—that various lodges have seceded. It may be so. Assuming that, how does it carry you a step further? Either they secede rightly or wrongly. If they secede wrongly, of course that is immaterial; if they secede rightly, then we have to see whether your right is as good as theirs.

Mr. Clare: I submit, my lord, that it is useful to me in this way, and I only put it for this purpose as showing that there had been a practice of seceding, and as showing that there is nothing in the old rules with reference to secession; and when the Act of 1875 came to be passed, and it was found necessary to put in the clause as to secession, it is a ground for argument, I submit, that up to 1875 there was no legal union whatever between the different lodges constituting or *quasi* constituting a district, and it was not necessary to have any provision for secession, because each lodge could secede.

Mr. Romer: If your lordships please, I understand from Mr. Clare that your lordships were good enough to say you would hear any further observations I had to make in the case. My lords, it appears to me that now all the facts are before you the point is narrowed down. It is a simple point, but no doubt a point of considerable importance. The solution of it appears to me to depend upon the construction of whether or not at the time when this society was formed it had or had not immediately after it was formed, if it chose, the power of seceding from the Order. At any rate, I propose to discuss that question before your lordships in the first instance, because it appears to me, on consideration, that this society, in any event, if it thought fit, had the power of seceding, and could preserve its existence as an independent society. Then it would follow that the connection between this society and the Order must have been a voluntary connection so long as it existed. It has always been a connection subject to this, that if it chose the lodge could secede from the Order.

Lord Justice Fry: Did the Order consist of anything but districts and lodges, with the single exception of Unity members?

Mr. Romer: I suppose not. That is to say I do not know what the Order did. It was registered as a friendly society in the first instance.

Lord Justice Fry: Were there no members of independent lodges at first?

Mr. Romer: I take it not, my lord. It seems to have been generally considered that if you found a member of a district or a member direct of the Order, he was in some form or other a person who belonged to a lodge, and whose lodge had in some way or other ceased to exist, or who was a member of a district which had ceased to exist. Whether that be so or not I am not sure.

Lord Justice Bowen: Which was the body at the beginning?

Mr. Romer: May I respectfully ask which your lordship is referring to?

Lord Justice Bowen: The crucial point is this. Every member of this body who is initiated binds himself to become a member of the Order, and to obey the rules for the time being, if properly passed, of the Order.

Mr. Romer: I will deal with that at once. What does it mean? I submit that a lodge can just as easily withdraw from the Order as a member can withdraw from the lodge if he choose to do so. So long as he is a member of the Order of Oddfellows he will obey the rules and nothing more.

Lord Justice Cotton: Take this: Supposing certain of your members were not willing to secede, and they say, "I entered a society which was to be backed up by a district which was backed up by an Order. What right have you to take from me a guarantee of security which that connection with the district and the Order gave."

Mr. Romer: Is that not begging the question, my lord? That is the reason I went back to the first point.

Lord Justice Cotton: That was your greatest difficulty at the starting. There are members of your lodge who say, "We do not want to go out." They entered the society which was connected with the district and connected with the Order, both of which gave security to those who invested their money by subscribing as members of the lodge.

Mr. Romer: That argument, if pressed against me, must be put as high as this, that it was a part of the fundamental constitution of the lodge that they should remain members of the lodge and that the lodge had no power to secede.

Lord Justice Fry: The admission, you see, is not to the lodge; the admission is to the Order.

Mr. Romer: That is quite true according to the dispensation.

Lord Justice Fry: I do not mean the dispensation—the certificate. The admission is that brother so and so is admitted a member of the Order.

Mr. Romer: Undoubtedly.

Lord Justice Fry: The society he has joined is the Order.

Mr. Romer: It is common ground that it was contemplated at starting that this was to be a branch of the Order. The only question really is whether that connection was not voluntary on the part of the lodge—whether or not, if it chose, the lodge could not secede.

Lord Justice Fry: I do not see how the lodge ever could have a separate existence. It only consists of a number of persons. Each member may secede and obtain his rights, but I do not see what independent existence the lodge had at all.

Mr. Romer: Certainly, my lord, it has an independent existence. That is admitted, because it is a separate society.

Lord Justice Fry: So far as it is a part of the Order.

Mr. Romer: Why could not a lodge just as much have a right to secede from the district as an individual from the lodge?

Lord Justice Fry: Simply because he cannot continue his payments. He does not secede in the same sense; he only loses his benefits.

Mr. Romer: You have no means of compelling a lodge, if it does not choose, to be a member of a district. My lords, will it not all come back to the point which I submitted would be the crucial point? You must consider whether or not it could have been in the contemplation of the parties who formed this lodge that they might under circumstances secede, or at any rate that they had a right to secede if they thought fit. If you once grant them the right to secede, they will still remain a friendly society, that is really the crucial point in this case—whether or not it was impossible for this society ever to secede. It is very important, therefore, to consider where secession is recognised. Was it or was it not considered that lodges might fall off and secede from the Order, and still remain independent societies? I say it was. My lords, we now have in existence some of the older rules. I would like to call

your lordships' attention to certain of these rules of the Order. These are the rules of 1871. The first rule I shall call attention to is rule 17 of this old Order. It is headed, "Unity Members: Rules for their Government." (Rule read.)

Lord Justice Fry: Do not those rules give a power of secession?

Mr. Romer: No, not the slightest. It is contemplated; that is inherent in the constitution of the lodges as separate societies, and it was common practice, too. It has been admitted before your lordships now, and it is be taken as evidence before you, that it has been the practice for lodges to secede, and secessions have been going on from time to time throughout, and it will be a very serious question. Of course I do not wish to hold it *in terrorem* over your lordships. I only want to point out to you what it may lead to. It may be possible that all these secessions are *ultra vires*, and that they have no power to do so, and that it is all *ultra vires* and illegal. It not only appears incidentally there—and I say it incidentally appears because it shows that secession was not by virtue of any rule at all—but it was inherent in the constitution. They had to provide for such cases. Now, take rule 34. That, again, is of importance as showing not only that the right of secession was indicated, but they had the power to take in other societies if they thought fit. It was a right to come in, and a right to go out. Of course, coming in under certain conditions——

Lord Justice Fry: What I do not see is this, how any society of this sort could go on with an unlimited power of secession in the lodges. According to that view of the rule, lodges may always secede. It would be ruinous, would it not, if the rich lodges were to leave the poor lodges in?

Mr. Romer: I suppose it would be ruinous if that were the case.

Lord Justice Fry: It would be always the interest of those who were rich to secede. I do not see what would hold them together if there is a power to secede unlimitedly.

Mr. Romer: That argument would apply to the lodge direct. How can a lodge go on after all the rich members are going to secede.

Lord Justice Fry: They leave their funds in. The result of that would be for them to leave their funds in for the benefit of the society.

Mr. Romer: They might have been only in for a year or two, and they might have received out from the lodge in the meantime more than they paid in. This settles itself. You have to pay in until you take out, and the person going out may have received ten times more than he has paid in.

Lord Justice Fry: For my own part I do not understand how it is possible that the whole concern is to be held together if the rich ones secede.

Mr. Romer: The answer is, unless under particular circumstances, for reasons which appear to them good, they have probably seen that they intended to keep together, and they will, except very grave circumstances arise to induce them. They must alter their rules, no doubt, to do it. (Clause 34 read.) You see the Order might have turned us out under

certain circumstances. We should not have ceased to exist; we should have gone on a separate society. Then we might have seceded, and if we had seceded for two years, we could not have joined again except on undergoing the process in rule 34. That rule is very important. It contemplates other societies coming in. Then the next is rule 49, page 44. (Rule read.) Then at the bottom of the page (rule read) they still recognise what they could not help recognising—the inherent power of these different lodges to have their own rules, and to pass their rules because the statute says they should. There the only hold they have was this—if you do pass rules, we cannot prevent you passing rules, but what we can do is to fine you, but so long as you remain a member of this Order, you shall be bound to pay us the fine. If you will not pay us the fine the only remedy we have is to expel you.

Lord Justice Cotton: Seceding is looked upon as a wrong thing: it prevents the court interfering by injunction. That is your real argument.

Mr. Romer: My real argument is this, that there is an inherent power in each of these lodges—it is always contemplated that there is a right to secede, if he thinks fit.

Lord Justice Cotton: It may be this: It knows people may keep on doing what they know is wrong; therefore they say, if you do this you shall be fined, suspended, or expelled. Your argument must be this, I think, that this provision is the only provision for secession.

Mr. Romer: No, not at all, my lord. There is secession, and there is expulsion.

Lord Justice Cotton: Yes. You say expulsion or suspension are the only penalties for secession. But does that prevent the court from interfering?

Lord Justice Fry: Do you say there is sufficient reference in these rules to the fact of secession to show that secession was contemplated?

Mr. Romer: Yes, that is my argument.

Lord Justice Cotton: I am saying that I do not think that will hold because it looks upon secession as a wrongful thing.

Mr. Romer: There is nothing to show that this secession is wrongful.

Lord Justice Fry: Yes, there is, because it says he is not entitled to benefits.

Mr. Romer: That is quite right, my lord—not that it was a wrongful act. It says we will allow those members of that lodge who objected to it, and who did not vote for the secession, to continue members of the district. It recognises what, in fact, I say it could not help recognising—the fact that these independent societies have gone on. It has not been an infrequent thing at all.

Lord Justice Fry: Your society was founded in 1830?

Mr. Romer: Yes.

Lord Justice Fry: Do you say it was a known thing then?

Mr. Romer: I say it was. When such a long time has elapsed we can only judge from what has taken place within the knowledge of those who can give testimony about it. We find, as a matter of fact, that secession has been common. There are numerous instances.

Lord Justice Fry: What is the earliest date of secession?

Mr. Romer: It might be said that a lodge formed after these rules were made is in a different position.

Lord Justice Fry: That did not form it; it registered the rules. That is all that it seems to have done.

Mr. Romer: I should say it would be common ground between the Order and ourselves that if a lodge joining in 1876 could secede, it could not be argued that that lodge was in a different position to a lodge which joined in 1830.

Lord Justice Fry: Why not? If it joined in 1876 it joined under rules which provided for a particular mode of secession, because the 1876 rules did provide that by a limited mode only.

Mr. Romer: There have been secessions as far as I can gather, and continued secessions.

Lord Justice Bowen: If there had been a hundred secessions, and the Order has made a rule that secessions could only take place in one way, I cannot see how the lodges could escape from that. I maintain that you are going to the wrong point.

Mr. Romer: My lord, I may be dealing with the case in a wrong way, but it does still appear to me that this is the key.

Lord Justice Bowen: I am only speaking of my point.

Mr. Romer: Your point, my lord, is, I think, coming to the rule which is passed later on. I will come to that presently, but I first want to see what was my position before 1875 and 1876, because the main argument against me, and I rather thought the basis of the judgment of the Vice-Chancellor, was this, that there was no power—it was *ultra vires* of this lodge to secede at all. In fact, as he put it, it was an obligation which was inherent in the constitution of this lodge that it should form a branch of the district and a branch of the Order; in fact, just as much as a society under the Companies Act of 1862 could not alter its memorandum of association. That, I think, was his point, and that is what I know is pressing Lord Justice Cotton, judging from his observations. He put it to me, you have to meet the right of the minority. I can only meet the right of the minority by saying you say it was inherent in the constitution of this society not to secede. If you once grant that, I am done, because then the minority beats me. Then, inasmuch as it was *ultra vires* a society under the Companies Act of 1862, to engage in a certain business—it could be stopped by a single shareholder—in fact, all the shareholders could not make it *ultra vires*—that is the reason I go back. If I once establish before your lordship that you cannot regard secession as being *ultra vires* in this society I shall succeed. That is why I want to dwell so much upon the earlier portion of the case. I ask your lordship to consider this society as being a separate and independent society, with the object, in the first instance,

in contemplation of all parties that it should be a branch of the district and of the Order. Aye or no, could it have been reasonably contemplated by those who formed this branch or lodge that it might, if it chose, under the circumstances secede? As to that I refer you to this, that secession, in fact, has taken place, not in one isolated case, but time after time—that there was no rule authorising secession of any kind, because secession was considered an inherent right of each lodge. I take up these rules of 1875, and I point out this to your lordships. They do not purport to authorise secession; in fact, how can they authorise secession if it be an inherent portion of the right of each lodge to be there?

Lord Justice Bowen: Is there any rule which regulates the withdrawing of members?

Mr. Clare: There is not.

Mr. Romer: I should think not.

Lord Justice Fry: You assume he can withdraw if he pleases.

Mr. Cozens Hardy: I agree with my friend that there is no rule which authorises the withdrawal; but certainly if a member withdraws he leaves all his funds in the Order.

Mr. Romer: As I say, he may have taken them out before.

Lord Justice Fry: Do not assume that he can withdraw—it is not in the rules. If it is I should like to see where it is. It may be that where his account is to the credit and he withdraws, nothing can be said to him; but it does not follow that if he had more debts than the amount he had paid he can withdraw at any time.

Mr. Romer: It is common ground, my lord, that he can withdraw.

Mr. Cozens Hardy: There is nothing entitling any member to withdraw and take out any funds.

Mr. Romer: You cannot possibly compel a man to go on making his payments.

Lord Justice Fry: Why should not you be able to sue him?

Mr. Romer: It has never been done. This would be reversing the whole object as settled.

Lord Justice Bowen: It is neither in the district rules nor the lodge rules?

Mr. Romer: No, my lord. It is always considered that the right of a man is to withdraw, and, as a matter of fact, withdrawals are the most common things. A man is a member of the society, and so long as he belongs to that society he does belong to it: when he withdraws from it he does withdraw. He may have received more benefits than he has paid money. On the other hand it is a risk. It is like an insurance. If I insure myself I am not bound to go on keeping up my policy if I do not choose. Your lordships may take it—of course if there is any dispute about it we will go into evidence upon it—that members have withdrawn when they have liked. When they have withdrawn

they have ceased to be members, and have ceased to be under any obligations. That will explain to you the meaning of the other, although I think you will find that it does not press upon me very much.

Lord Justice Fry: There is no oath administered, as I understand.

Mr. Romer: No; it is simply a promise. What it means is this, that while he is a member of the Order of Oddfellows he will obey the rules of the lodge and of the Order. That is right, and so the dispensation is quite right. It is a very grand document, and no doubt it authorises certain persons in forming this society to be able to say it is a lodge and part of the district and part of the Order. In this case the sole effect of the dispensation is this, if they do not comply, then the dispensation becomes void. "The officers and brothers of the Caledonian Lodge"—this is in the dispensation—"shall not deviate from the principles and regulations of the Manchester Unity of Independent Oddfellows, but shall in all and in every respect comply with these dispensation presents and laws, and them duly keep, observe, and enforce according to the purport, true intent, and meaning of the Loyal Independent Order, or this dispensation shall be null and void." That is quite right; if they do not choose to obey the rules then they no longer remain members of the Order. What I am stating, my lords, is what the common view hitherto has been of all persons interested in these societies, and I think it appears from the books of practice on the subject. Now, I will go back and see if I am right in saying that it was contemplated that secession was a thing to be regarded as possible and a right of the lodge, and if secession was recognised as existing, and recognised in practice, and authorised by the rules of the Order. The secession is referred to as an existing right—not a right given by the Order. The Order would do all it could to prevent lodges seceding, no doubt; but secession is recognised incidentally according to the practice. You find that the rules of the Order recognise it as an existing right; you find the right acted upon by lodges without protest from the time of the formation of the Order till now. Many and many lodges have seceded, and yet not one has been stopped. If the contention, or one of the contentions, on the other side be correct, that it was *ultra vires* in a lodge to secede ———

Lord Justice Bowen: Have any lodges seceded since the rule was passed regulating that?

Mr. Romer: I do not know, my lord. I cannot tell. Perhaps this is the first. But if I was an independent society having a right to secede and only bound to obey the rules so long as I remained a member of the Order, is it conceivable that the Order, knowing that that right existed, could pass a new rule in 1880, and pass a resolution that I shall not secede?

Lord Justice Fry: Why not? I do not follow you—because each member agreed to conform to all rules duly passed by the Order.

Mr. Romer: But does not that mean so long as it is a member of the society? It would be a most curious thing else.

Lord Justice Fry: It is what an individual member agrees to do—to conform to all the rules duly passed by the authorised committee of the Order.

Mr. Romer: That can only mean when he is a member of the Order.

Lord Justice Bowen: That is supposing he may go out when he likes —walk out and cease to be a member. But if they come to contract that they shall not break up your association within such and such a time, it is another matter.

Mr. Romer: I join a society where it is a recognised right in the society to leave when I choose, and a recognised right that I should obey the rules for the time being. Then they pass a rule that nobody can withdraw from the society except upon certain terms. They pass that, and I decline to recognise it; I withdraw at once. Then they say I cannot do it.

Lord Justice Bowen: The case is that of having a majority against you. One of the members does not like it, and nevertheless goes on and continues to act as a member of the society and bound by its rules.

Mr. Romer: We have repudiated that new rule of theirs from the very commencement, and the whole difficulty has arisen on that account.

Lord Justice Fry: In 1876 did you? What did you do in 1876?

Mr. Romer: What they did was to pass these rules. After they had registered themselves under the Act of 1875 and 1876 they then passed a resolution that we must register ourselves as a branch. When I come to that part of the case later on I shall argue that it was *ultra vires* – that the Order had no power to pass such a rule as that. There must be some reciprocal obligations when I said that I would obey the rules while I am a member of that Order. That does not mean to have me bound hand and foot over to the Order. The Order could not pass a rule that any society should cease to exist. It could not pass any resolution which would in fact alter the very existence of my society.

Mr. Cozens Hardy: It is common ground that the suit did not arise till 1884.

Mr. Romer: I should say that a resolution purporting to take away from us the inherent right of our society, and to say the society could not have a separate existence as it were, was *ultra vires* the Order.

Lord Justice Cotton: Is it not really putting into form and shape one of the real objects of these societies—security for members for what they pay? If it was a rule entirely alien and foreign from the objects of the society there would be no difficulty, but if I understand you it is to prevent any lodge which retires from doing certain things, and it is in order to make provision for any member who does not wish to break up.

Mr. Romer: That rule 10, my lord, if carried to the full extent, would.

Lord Justice Cotton: As I understand, one of the benefits of the Oddfellows with regard to this was, that they might guarantee payments and provide for their members. The district guarantees that, the Order guarantees it, and is it not reasonable, therefore, that the Order should pass a rule that before you can secede, if there is any member who wishes to retain the benefits of the lodge with its contract and guarantee, he shall be provided for before abandoning your liabilities? I forget

what the rule is as to the security. If the lodge fails, any members who have conducted themselves in accordance with the rules afterwards fall back on the district, and if the district fails any members who have conducted themselves in accordance with the rules fall back on the Order.

Mr. Romer: Again, there is a very curious question arising on that secession. Suppose I had a right to secede by the constitution of my society, and then they pass a resolution "if you do secede you will make a certain payment," that may form a ground of action for payment. How can you enforce specific performance of a rule like that? They pass a rule saying, "You shall not go, you shall make certain payments of that kind." They cannot take away the right of a society for that.

Lord Justice Cotton: They can give it up.

Mr. Romer: I do not think it is possible for a society to give it up.

Lord Justice Cotton: Why not?

Mr. Romer: Any more than they can cease to exist as societies. That might be a ground for an action, if they brought an action of this kind, but what they have done is to get an injunction to restrain us.

Lord Justice Fry: After you have done this act.

Mr. Romer: We are still going on as a friendly society, and if we are right we are right. If they have a pecuniary claim against us, we will meet it. We say there is none. There might be a nice question as to the statute of frauds arising. Whether or not, I will meet that claim when it arises. I am here to discuss my inherent right, and I think your lordships will come back to that point probably. Of course, I shall have to deal with the later points. This is the point. Can you or can you not hold that it was impossible for this society to secede—that it had no right to do it? It is a very curious result. If you once admit that it was in the power of my society to secede, it does not become a question of minority, because if it was in the power of my society to secede, it is equally bound by the majority and the rest of the thing.

Lord Justice Fry: Unless the practice has become such as to alter the rules of the society, I do not see how that bears upon the point. When you have acted upon the rules which persons make who join the society it is extremely difficult, in my mind, to introduce such points. Supposing you were a separate society, with a right to separation in 1830, would not this deed, the registration of your rule, and the circumstances, so far as it could constitute you a friendly society, alter your original contract. Did that give you a power of secession which you had not before?

Mr. Romer: No. I think I may admit that.

Lord Justice Fry: Then we go back to what was your condition in 1830?

Mr. Romer: I think that is what it comes to, and it is for that very reason that I took that point first, and I am discussing it. We do not know, and it is so many years ago since 1830.

Lord Justice Fry: So far as we know, all that happened was this: the Order gave permission to admit persons as members of the Order.

Mr. Romer: And they formed a friendly society.

Lord Justice Fry: No, I do not agree with that at all.

Lord Justice Bowen: It is like an aggregation of lodges.

Mr. Romer: Is not that pressing rather too hardly against me. We cannot find our early rules, but I shall ask your lordships to assume that they were not very different from the rules that we have, and taking these rules we certainly find it treated as a society complete in itself.

Lord Justice Fry: What are you? You are only an auxiliary branch of a district of the Order.

Mr. Romer: That is so.

Lord Justice Fry: Then that is a division for the purpose of administration of one Order—one society.

Mr. Romer: But going beyond that, if it stopped there its objects are defined. Its objects are those of a friendly society, and throughout you find these rules complete. This is stating what funds should be subscribed and how the funds should be dealt with; there is not an allusion to the funds being dealt with for any purpose other than for the purpose and objects of the members of this society, and at the very end of that very rule occur these important words: "But no person but those members who subscribe to the funds and conform to the rules of this lodge shall have any control whatever in the administration or distribution of the funds thereof." And throughout you will find that it is a complete society, with officers, committees of management, and every provision for contribution and for dealing with the sick and funeral payments—in fact, a complete set of rules for a society, recognised by our being registered as a separate friendly society under the Act of 1855. So long as the lodge chooses to remain a member of the great Order, they will obey the rules of the Order, and the members of the lodge will remain members of the Order; but just as a man may retire from a lodge, if I am right in that, so a lodge may retire from the district, and the district retire from the Order. I think I have made my point clear to your lordships on the first part of the case, and I need not repeat it. Your lordships have it. Now, my lords, at the time when our society was established the Act of Parliament regulating friendly societies was that Act which your lordships were referred to by my friend Mr. Cozens Hardy, the 10 Geo. IV., c. 56, s. 2, after reciting that certain friendly societies had been established, enacts; "That it shall and may be lawful to and for any number of persons in Great Britain and Ireland to form themselves into and to establish a society for the purpose of raising from time to time by subscriptions of the several members of every such society, or by voluntary contributions or by donations, a stock or fund for the mutual relief and maintenance of all and every the members thereof"—and so on. Then it says: "And to and for the several members of each society from time to time to assemble together and to make, ordain, and constitute such proper and wholesome rules for the better government and guidance of the same as to the major part of the members of such society so assembled together shall seem meet so as such rules shall not be repugnant to the laws of this realm, nor in any of the express provisions or regulations

of this Act." Under that Act this society must have been established, because that was passed in 1829, and this society was established in 1830.

Lord Justice Cotton: It did not register under this Act.

Mr. Romer: No; I do not know that it was bound to register under that Act.

Mr. Cozens Hardy: No society was entitled to the benefit of the Act unless it registered under it.

Lord Justice Cotton: It gave certain societies of this class who liked to register certain privileges. That is all, I think, Mr. Romer.

Mr. Romer: My friend says that that section he refers to is, "No society shall be entitled to the benefit of this Act unless their rules have been confirmed."

Lord Justice Cotton: Confirmed by the barrister appointed to examine and approve the rules.

Lord Justice Fry: What is the argument you are drawing from that?

Mr. Romer: Under the Act of 1855, which we register under, there was an absolute power to alter the rules.

Lord Justice Fry: There is no doubt about the power to alter the rules.

Mr. Romer: I shall ask your lordships to assume, in the absence of any evidence to the contrary, that substantially the rules which were registered in 1830 were the same as those which were registered under the Act of 1855. Then, my lords, we come to the registration in 1855. That registration was as a separate society, and gave us power to alter the rules. Under the Act of 1855 we registered, and that Act gave us full power to alter rules, and did not exclude any rules whatever. I submit that unless it absolutely varied the constitution of our society, we were quite entitled to alter the rules which made us part of the district branch and Order, and also to alter that rule which provided for arbitration.

Lord Justice Bowen: So far as the registration went.

Mr. Romer: So far as our society was concerned.

Lord Justice Bowen: That is the point.

Mr. Romer: The Act of 1855 gave us express power to alter rules.

Lord Justice Fry: In 1855 the Act said that "society" should include every branch. Then when the Order registered under that, that was your branch, was it not? That was the Act of 1855. In section 49 it says that the word "society" shall include every branch. Then the registration takes place of the Order before the registration of the lodge. Does not section 49 provide that?

Mr. Romer: That certainly has never been contended as against us, and I submit that it could not. I do not know whether the Order was registered under this Act.

Mr. Cozens Hardy: It was.

Mr. Romer: Assuming it was, I submit that the registration of the Order amounted in itself to the registration of the society. If you register the society you must register a branch as a separate society. It does not mean that registering the society makes the difference. "The word 'society' shall extend to and include every branch of the society, by whatever name it may be designated." That is to say, a branch of the society may be a society, and will be for the purpose of this Act, and that is in accordance with the interpretation put upon it. At any rate we registered under this Act as a separate society. That is common ground.

Lord Justice Fry: I do not understand what is the registering of the Order. As I understand, the Order is nothing but the branches and certain residual branches which were left by the destruction of some of the branches. What is it you call registering the Order?

Mr. Romer: It is a separate society. It has direct members, too.

Lord Justice Fry: It has no direct members.

Mr. Romer: I opened to your lordships according to my instructions, as I understand them. How those members came into it originally I do not know, but that the Order itself had direct members, and that the district had direct members, is, as I understand it, in accordance with my instructions.

Lord Justice Cotton: According to the rules which were laid before us, that is nothing. The Order had only those members which fell into it, and the districts only had those members of failing lodges who fell into it.

Mr. Romer: I think if we go back to the history of it, it is this—that there was a friendly society formed, and that that subsequently became the head office of the Order. We have already got much material before your lordships that we had not before the Vice-Chancellor, and material used against me rightly and properly so far as it is so. I am sure our object is to have this matter brought fully to your lordships' attention.

Lord Justice Fry: Mr. Cozens Hardy opened it to us that there were no members of the Order except those who had become Unity members from the dissolution, or the decay of the lodge, or the district to which they had belonged.

Mr. Cozens Hardy: The earliest documents we have go back to 1838, and they show that the constitution of the society was substantially the same as it is now. There were lodges, districts, and the Order, every member of the Order being a person in the lodge or district, and nobody becoming a Unity member except—

Lord Justice Fry: You mean there were no original non-collegiate members.

Mr. Cozens Hardy: Your lordship will not understand me as suggesting that at the inception of the society the Order may not have started without these divisions.

Lord Justice Cotton: What is there in the Act of 1855 which enables societies not friendly societies to join, and to alter their constitution by joining? It contemplates societies already formed gaining a separate existence by registering under this Act. You see it enables all the societies already regulated by the previous Acts to come in under this Act, and then it contemplates other societies being formed.

Mr. Romer: Section 2 provides that notwithstanding the repeal of the old statutes dealing with friendly societies, every friendly society——

Lord Justice Cotton: That is not the case with you—you have never come under the Act at all. I do not know, of course; but, just glancing over the Act, I think there is nothing which enables societies existing to come in and alter their constitution by getting themselves certified under this Act.

Mr. Romer: It would be still better for me if I came in as an independent society. Either I came in under this Act of 1855, as an old friendly society, or as a new society expressly under the Act. If I came in as a new society expressly under this Act, then that is better for me, because I register as a separate society with the express power of having my rules altered.

Lord Justice Cotton: Section 11 is what you must rely upon, and you get the benefit under sections 17, 18, 19, and 20.

Mr. Romer: That is benevolent societies; it is a separate section. I think that it is intended to apply to mere benevolent societies. I think it is intended to apply to a different class of societies. Those were not friendly societies. Now, my lords, the position I hope to have assumed by this time is that when I have now registered under the Act of 1855, I have the right, if I choose, to cease to continue to be a member of the Order, to sever the connection, and to alter the rules accordingly, so as to carry that out if these parties wish. If they say, "You could not secede; it was a fundamental part of the society that you must be a branch in that sense, and that you could not have a separate independent existence," it comes to this. If the other side say that prior to 1875 or 1876 we could not secede, they must say that the Order could not authorise us to secede; that they could not expel us; that we could not have a separate existence apart from the Order.

Lord Justice Fry: Because they say you are only members of the Order. That is all they say, whether right or wrong. That is the way the case is put against you. If your registration has anything to do with it, registration may affect your rights, and the rights of members of your lodge, but you are quite contented with the registration, you accept your obligation. What is said in the admission is this, "You are now admitted a member of our Order." These are the words of admission.

Mr. Romer: Yes, and then as the lodge makes no provision for a man retiring, so the Order makes no rules for a lodge retiring. So I point out that it recognises the right. So far as contributions are concerned, there was no difficulty there. There is no contract so long as we remain members of the Order. We discharged our obligations, and the accounts were perfectly settled as between us. So far as sick members were concerned, we discharged our obligations direct. The only way in

which we had anything to do with the district or the Order, so far as money matters were concerned, was with reference to the funeral payments, and that was done in the way I have mentioned. Each funeral account was settled every quarter. We paid so much for every quarter as representing our share of the liabilities of the lodge per quarter, and they paid back to us so much as we were entitled to receive in respect of the quarter for deaths in the quarter, and a balance was paid one way or the other as the case may be, but in that way each quarter settled its own accounts. It was simply a case of insurance. You insured so much, and you got back so much if there was a death. But it settled the account. We were under no more obligations to the Order than the Order was under to us. It was a question merely that so long as we chose to remain a member of the Order, we had a voice in the management of our affairs in one respect, namely, so far as the funeral funds were concerned. Supposing there had been some accounts outstanding, it might be in the form of debts due to us, but that did not prevent us from otherwise having the power to secede. Now your lordships know what the first thing they did was. What really gave rise to this dispute was this, they passed a resolution that we should register under the Act of 1875 and 1876. This is the resolution they passed. It was passed by the Annual Movable Committee of the Order—that was the governing body: "That every lodge in Great Britain and Ireland whose rules have not yet been registered be required to register such rules as a branch of the Unity on or before the 1st May, 1884." And that same affidavit, which is an affidavit filed on behalf of the plaintiffs by Mr. Chadwick, I may as well read at page 2 of the printed evidence, clause 5. It stated this: "Previously to the passing of the said Act, all the lodges and districts of the said society had been registered under the existing Acts relating to friendly societies as separate societies, there being then no provision for the registration of branches as branches"—that is common ground. They passed this resolution that every lodge must register under the Act of 1875. That necessitated this under the regulations which govern all applications under those two Acts. It was provided that "no branch of the society can be registered under this Act which is already registered as a separate society, nor is any such branch to be included in any list of branches under section 29, unless and until its separate registry has been cancelled." Therefore, that was a resolution against us which compelled us, if it was valid, absolutely to annihilate our separate registration, and cease to be, as we had hitherto been, a separate society with a separate registration. It would have placed us in an entirely different position—the position merely of a legal branch, whereas admittedly up to this time we had the position of a separate society with a separate registration. We could not comply with the resolution unless we complied with section 49 of the Treasury regulations, and cancelled our existing separate registration. Now, my lords, I say that that was wholly unauthorised—that that was *ultra vires* the Order.

Lord Justice Fry: It does not follow that because that was unauthorised, therefore you should secede.

Mr. Romer: It is common ground that we can secede, otherwise what right have they to pass a resolution and say we shall secede on terms.

Lord Justice Fry: They give you that right. It may well be that it is not possible to allow secession of branches without making provision

for the liability to be incurred. At the same time it may not be unreasonable to allow them to secede providing they pay over to the district a sum to meet all the liabilities of the lodge. That may not be inconsistent with the existence of the entire lodge, the other mode of secession may be.

Mr. Romer: I do not know whether they say there was any right of secession whatever, until they chose to give it to us, or whether they say there was a right of secession, and previously we might have acted upon it, until the passing of their rule to which I will call your lordships' attention in a moment; and that in May, 1876, we could only secede in accordance with that rule. It must be in accordance with one of these two positions. Either they say there was no right to secede at all until they gave it us, or there was a right to secede at all times until they passed their rule in 1876, and then we can only secede in accordance with that rule.

Lord Justice Fry: They say that the initiation was a promise to conform to all rules duly passed by the authorised committee of the Order. They say that means rules from time to time duly passed. Amongst the rules duly passed was one which was that if you secede, it is contrary to the terms by which every member has been admitted. That is the way they put it.

Mr. Romer: That every member of each lodge has agreed to conform to all the rules of the Order for the time being. Is not the answer to that this: true so long as we continue members of the Order that binds us, but the true construction is——

Lord Justice Fry: You must be members of the Order until you have seceded: they say you cannot secede except upon terms. You must be members of the Order until you have seceded.

Mr. Romer: Yes.

Lord Justice Fry: Then the rule, it is said, covered secession.

Mr. Romer: Now, my lords, consider it before 1875. We had a right at that time to secede. Then they passed this rule. Our obligation was this: We are members of the society, and we are to obey the rules of the Order. Does that mean any order they choose to pass, however inconsistent with our existence as a separate society? Now let me see whether they were entitled to pass that secession rule. At page 9 there is: "Any branch of this district being desirous of seceding shall first call a special general meeting, Every member shall have seven days' notice thereof, and the summons calling the meeting shall require the member to fill up and return a form, which shall be supplied him, stating whether he assents to, or dissents from, the proposed secession, when, it three-fourths of all the members are in favour thereof, the whole of the papers, with a statement of accounts, and the names, ages, addresses, and nature of disease of the sick members, shall be sent to the Provincial Corresponding Secretary. The district officers shall lay the matter before the board of directors, who shall ascertain the liability of such members, and after deducting the necessary amount to meet the same, the remainder of the fund shall be divided equitably amongst the members." They pass a resolution which is to the effect that if we secede the lodge is to be broken up, and all the

funds are to be divided amongst the members. If we could have seceded before this—and admittedly there was no rule to prevent our secession before this time—what right have they to pass a rule which, under the guise of permitting secession, a right which we had before, broke up our society?

Lord Justice Fry: That rule is passed by a committee constituted as your representatives.

Mr. Romer: There must be some implied limit to their authority.

Lord Justice Fry: What more reasonable than that, if you exercise a right which you have to secede, you shall only exercise it upon the terms that it maintains the solidity and the existence of the original body? You shall not destroy the original body.

Mr. Romer: No, it does not destroy the original body; but if we had a right to secede before this, and admittedly that is so, there is no rule to prevent our seceding. What right had they to pass a resolution which says, "If you secede from and after this time, you shall only secede on terms of being broken up?" That is what it comes to.

Lord Justice Bowen: Why did you take part in the act, and assent to it afterwards?

Mr. Romer: I submit we did not.

Lord Justice Fry: But what is called the Annual Movable Committee is elected by deputies, in the election of whom you took part, and that body passed the rule.

Mr. Romer: If I am right in saying it was *ultra vires*, we could not bind ourselves to it.

Lord Justice Fry: It is difficult to say it was *ultra vires* when you were party to it.

Mr. Romer: It is putting it too strongly, I submit, to say I am party to it, because they are independent separate societies.

Lord Justice Fry: You cannot say that; they are not independent.

Mr. Romer: Take it as a lodge. A member joins a lodge and it is admitted he has a right to withdraw, though nothing is said about withdrawal at all. Then the lodge suddenly passes a rule saying that he shall not withdraw unless he pays £100 down to the lodge.

Lord Justice Fry: Supposing they passed this rule—supposing a member desiring to withdraw receives greater benefit than he has paid money.

Mr. Romer: I submit that it would be so even in that case. Of course you can take cases where it is more difficult to decide. In the case I have mentioned a man joins a lodge; admittedly it is the right of every person who joins a lodge, and it has been the practice of the lodge for years and years, that he may withdraw at any time, then they pass a resolution that he shall not withdraw unless he pays a fine, and they say that was passed while you were a member, and from and after this time you cannot withdraw except on paying that fine.

Lord Justice Cotton: It is like a mutual insurance. They have no more right to say we are going away after having enjoyed the benefits of the society than you are entitled to say we are going away, leaving them to enjoy benefits they have got from us.

Mr. Romer: At the time they passed that resolution which, as I say, gave us under the guise of going out a right to secede, and which was, in fact, a resolution that if we did secede we should be annihilated, the Act of 1876 was passed, and that in section 54 provides this, "Nothing in the principal Act or in this Act contained shall prevent any registered society or branch from contributing to the funds, or taking part by delegates or otherwise in the government of any other registered society or registered branch of a society, as may be provided in the rules of such first-named society or branch, without becoming a branch under the Friendly Societies Acts of such other society or branch."

Mr. Cozens Hardy: I do not know whether it is material as to what the facts are before that Act.

Mr. Romer: Then I should say that this recognised what was the position of affairs in the eyes of the legislature even at that time. You cannot imply from a proviso of this kind that but for the proviso the law was different. This recognised the right of any registered society or registered branch. We had before that become a branch by the Friendly Societies Act.

Lord Justice Cotton: I do not quite see the point of that remark of yours.

Mr. Romer: It is this, my lord, they cannot say that under the Act of 1875 or 1876 they had a right to compel us to become a legal branch by registration under the Act. This expressly recognises the right of any registered society or registered branch to continue to take part as a delegate in the government of the head society without becoming a branch of this society in 1876—a legal branch of that society. It expressly recognises, by statute, the right which I say would have been apparent without this expression of the intention of the legislature. The Act did not intend to confer upon the society, in this case, the right to compel us to become a registered branch under the Act. Then I say, that, they having passed a resolution which has given rise to these difficulties, which they had no right to pass, namely, a resolution compelling us to register as a branch, they have no right to come to the court for relief now, inasmuch as we have resolved to depart by reason of that illegal act of theirs.

Lord Justice Fry: But you had registered in 1873.

Mr. Romer: Yes, but not under these Acts, my lord. You must look at the interpretation of clause 1 of the Act of 1876. It interprets what the Friendly Societies Act means in section 4. The "Friendly Societies Act" in this Act means 1875 and 1876.

Lord Justice Fry: Then you had not registered under the Act of 1875 and 1876.

Mr. Romer: No.

Lord Justice Fry: "Nothing in the principal Act or in this Act contained, shall prevent any registered society."

Mr. Romer: "Any registered society." I say this was a registered society.

Lord Justice Fry: But not registered under the Act of 1875 and 1876 at this time.

Mr. Romer: No; but it does not mean registration under the Act of 1875 and 1876 necessarily.

Lord Justice Fry: I do not understand what your argument upon it is.

Mr. Romer: It is this, my lord. I say I have a right not to register under the Act of 1875 and 1876 as a legal branch.

Lord Justice Fry: Then how does this affect the section?

Mr. Romer: It expressly recognises that right.

Lord Justice Fry: It recognises your right when you are registered to do certain things. But how does that recognise your right when you are not registered? I do not follow that.

Mr. Romer: "Registered society or registered branch," means registered under these Acts of 1875 or 1876.

Lord Justice Fry: Assume it does not, then you are a registered branch.

Mr. Romer: I am a registered society.

Lord Justice Fry: "Nothing shall prevent any registered society or branch from contributing to the funds," and so on.

Mr. Romer: That is just what we had been doing——

Lord Justice Fry: This does not prevent it.

Mr. Romer: Without becoming a branch under these Acts. There it means 1875 and 1876. As I say, we were a separate society; we were not a registered branch. This section of the Act, as I submit, points out that the right would still exist.

Lord Justice Fry: There is nothing in the Act which helps you.

Mr. Romer: It might not further the argument very much, but it goes with it to show that the position I am taking up is correct. We were not bound to register the branch. We could have still performed all our duties to the Order without registering this as a branch. Then why should they pass that resolution? That is the cause of the war. That is admitted. It is from that resolution that all the bother comes. They having passed that resolution, we will not comply with it. They thereupon say we are contumacious. They asked us to deliver up our books, and they suspended us. In that state of things we find ourselves suspended for what we call non-compliance with an illegal resolution. Thereupon, what are we to do? We say we will alter our rules and go on

as an independent society. Then under those circumstances they apply for an injunction to restrain us. I submit that even if we might have been bound by the rule—if we had voluntarily broken off from the society without any misconduct on the part of the society, under the circumstances they debar themselves from the right of preventing us doing what we have done. I ought to mention to your lordships that under the circumstances which have given rise to this dispute, the meeting which passed the resolution to change the rules was unanimous. At the confirmatory meeting it was confirmed, and there was only one in the minority against a very large body—sixty-seven, or something like that.

Lord Justice Fry: To alter the rules for the purpose of making it a separate society?

Mr. Romer: Yes, that is to say, in two respects; altering the name, so as no longer to call ourselves, as we should not have been justified in doing, an auxiliary branch; and also that rule as to arbitration. When those rules were altered there was not a single thing in our rules which referred to the parent society. We were a perfectly independent society, with rules amply sufficient to carry the whole of our objects. Then, my lords, finally, it turns upon the form of injunction. The first part of the injunction is an injunction to restrain us from carrying on, or continuing to carry on, the business of the lodge as a separate society without first complying with the rules of the Bolton District with reference to secession or separation. In any case we are entitled to carry on business as a separate society.

Lord Justice Cotton: As I understand your argument, the Unity passed a resolution which they had no right to pass, and because you would not comply with it they suspended you—prevented you from having any benefit.

Mr. Romer: Yes.

Lord Justice Cotton: And that being so, they cannot interfere now with the assistance of the court.

Mr. Romer: Yes, my lord, that is so; and then I point out that in any form the injunction is wrong—that they have no right to prevent us from carrying on business as a separate society.

Lord Justice Fry: Where shall I find the direction about the registering?

Mr. Romer: "On Whit-Monday, in 1883, the Annual Movable Committee duly passed a resolution that every lodge in Great Britain and Ireland, whose rules have not yet been registered be required to register such rules as a branch of the Unity on or before the 1st of May, 1884." I have not gone through the subsequent resolutions. You will find it is common ground. Then the district call upon us to register. We decline. Then they suspend us; then they require us to deliver up our books. That we do, and being suspended and ousted in that way from the body, we did pass the rules I have mentioned. That was what gave rise to it entirely.

Lord Justice Fry: As I understand it, you say that whether you had a right to secede or not it is a case in which the court had no right to grant the injunction.

Mr. Romer: Yes.

Lord Justice Fry: What is your objection to the resolution of Whit-Monday, 1883?

Mr. Romer: That it required us to register as a branch under the Act of 1875 and 1876. That is to say, as I pointed out, that would put us entirely under the legal control of the society, and under rule 49 of the regulations of the Treasury, we could only register as a branch by cancelling our separate rules.

Lord Justice Fry: I do not see what harm that does—registering as a branch. It comes back to the question whether you are an independent society. Assuming that you are a branch and nothing more, there is nothing objectionable in it. Supposing you were a branch of an independent society, then there is nothing in the requisition objectionable.

Mr. Romer: Yes, my lord, I submit there was. Although I might have been a branch in one sense, still I was a branch having the position of a separate society with separate registration.

Lord Justice Fry: That comes back again to the question whether you had a separate right. Supposing you had no separate rights in 1883, was there anything objectionable in the requisition?

Mr. Romer: I had many separate parts. I had nothing to do with the management at all except with regard to the funeral fund.

Lord Justice Bowen: Was not there a rule of the Order that the lodges should register separately?

Mr. Cozens Hardy: It is page 6. "The rules of all lodges and districts in the United Kingdom shall be registered in accordance with the Friendly Societies Act." That is the Act of 1875.

Lord Justice Bowen: Then you see you still go back to the same question. If the Order of whom you were a part passed a resolution that the lodges should register, and you did not object to that at the time when it was passed, are not you afterwards precluded from saying you were not bound by it?

Mr. Romer: We did object at once to the passing of this resolution.

Mr. Justice Bowen: I am distinguishing between the resolution and the rule. If the Order made a rule, to the passing of which rule you were a party, and which rule was that lodges should register, and you did not object to that rule at the time, are you not afterwards bound by it as by any other rule of the Order?

Mr. Romer: We did object to it at once, my lord.

Lord Justice Bowen: At the time?

Mr. Romer: Yes.

Mr. Cozens Hardy: No.

Mr. Romer: We certainly did. That was on Whit-Monday, 1883. My friend Mr. Cozens Hardy is referring to a different rule, referring to registration under the Act of 1875.

Mr. Cozens Hardy: That is the rule.

Mr. Romer: Every branch of the society, and every member shall be bound by the rules of the Order. "The rules of all lodges and districts in the United Kingdom shall be registered in accordance with the Friendly Societies Act."

Lord Justice Bowen: What Act is that?

Mr. Romer: The Act of 1875. All I can say is, that is very ambiguous. What that rule means is, that we shall cancel our registration.

Lord Justice Fry: Why not? You come back to the old question. If you were an independent body, then it is no doubt wrong that they should require you to register as a branch; if you were not, then there are a number of members of the Order under the Annual Movable Committee having a separate fund, administered by themselves. It comes back to the old question, does it not?

Mr. Romer: When they talk about a branch, I do not know that it means a society such as ours. Rule 3, as to district branches, is pointing to something in the future. As far as I understand, it points to branches to be formed under the Act, which would be the natural meaning of legal branches.

Lord Justice Bowen: That is the registration rule.

Mr. Romer: It is leading up to that. "District branches to be established by the Annual Movable Committee shall consist of branches called lodges, established by the directors under these rules, and shall be governed by a committee, to be called the District Committee, composed of deputies appointed by lodges." That is clearly pointing to legal branches to be established.

Lord Justice Fry: It cannot be so. "Every branch of this society shall be bound by these rules." The word branch does not mean future branch.

Mr. Romer: At this time it dealt with future branches, I submit.

Lord Justice Fry: "It shall consist of an unlimited number of members, shall be divided into branches, called districts and lodges, as hereinafter provided." That means existing branches as well as future ones.

Mr. Romer: When you come to this it will be very curious to say that this was intended to apply to a society already registered, although that was a branch in the sense which we name. "The rules of all lodges and districts in the United Kingdom shall be registered in accordance with the Friendly Societies Act." It is very curious to say that that means that all our old rules are to be altered. It is difficult to say that that could be intended to apply to us. But what does this come to? It is going to be pushed against me as far as this, you have recognised that to be the rule and you are bound by it. My lords, it is clear we never so considered it. We never did register. We clearly have never assented to it.

Lord Justice Bowen: You have never fulfilled it.

Mr. Romer: If we do not fulfil a contract it is some evidence. There is a rule passed which they say means so-and-so. We never understood it so. What is the good of their passing a subsequent resolution that we shall be registered? At any rate is not this clear? Directly it is brought to our attention that they have the intention to force us to register, we protest and object.

Lord Justice Fry: The affidavit says, "The society has been gradually registering its branches since the passing of that Act," bringing them into the fold.

Mr. Romer: Some of them. I dare say a good many have done so willingly, but I submit you ought not to press that so far against me.

Lord Justice Bowen: Is there any evidence at all that you protested against this rule?

Mr. Romer: I never heard it suggested that it had this meaning. It is a question of fact whether we have acceded to it. I am told, my lords, that the district had not registered at the time they passed the resolution. I am afraid I am occupying your lordships' time, but it is a very curious case, and a very difficult one to deal with. We have not the rules dealing with the early formation of these societies, nor are the rules as clear as they might be; but I ask your lordships to say we are entitled to retain our position as a separate society registered under the old Act—the existence of a separate society, and a separate entity, if I may so describe it, that we had. My lords, for these reasons I submit that this injunction ought not to have been granted. As to the form of it, I submit that certain portions of it are clearly wrong in any one view.

Lord Justice Fry: What right have they to commit any breach of trust in relation to the funds and property?

Mr. Romer: I am not aware that we are committing any breach of trust in relation to the funds and property. They have got an injunction "to restrain the defendants and others, the officers of the above-named Loyal Caledonian Lodge, from applying to register or proceeding to register such lodge as a society separate from and independent of the plaintiff society, or otherwise than as a branch or lodge of the plaintiff society, and from carrying on or continuing to carry on the business of the said lodge as a separate society without first complying with the rules of the Bolton District, and of the plaintiff society as to secession or separation, and to restrain the defendants and others, the officers of the said lodge, from applying the funds and property of the defendant lodge for the purposes of a new society, or for any purposes other than the purposes of a lodge or branch of the plaintiff society, or otherwise than in accordance with the rules duly made and certified of the plaintiff society, the Bolton District branch of such society, and of the said lodge, and from withholding from the plaintiff society and the Bolton District branch thereof the contributions to which they are entitled." As far as I can see, if there is the liability to payment there may be judgment for the amount; but I never heard that a creditor should be entitled to restrain his debtors from holding the amount. They have not restrained us from seceding, but they only restrained us from

seceding without complying with these rules, and they restrain us generally from applying our funds for any purpose other than those of a lodge or branch. I ask your lordships, on the grounds that I have urged before you, to reverse the judgment of the Vice-Chancellor.

Mr. Clare: If your lordships please. I am with my friend Mr. Romer, and I should like to add a few words to what he has said. The substantial question your lordships will have to decide is this, whether the Caledonian Society is tied to the district and the Unity for all time or not—I mean except, of course, upon the terms provided by the new rules made in 1875. I assume, if we are so tied, we are so tied by virtue of some contract, and a question then arises as to what are the facts, or what are the documents from which you are to infer the contract, or from which you are to read the contract, and what is the contract if you are to read any at all. It is suggested that there are two matters from either of which you can infer a contract that we are to remain tied to the parent society, if I may call it a parent society, for all time. One is the fact that the individual members of the lodge are initiated by a form which binds them to observe the rules of the society. We find that the rules of the Caledonian Society contain the words, "The society is to form an auxiliary branch of the Bolton District of the Independent Order of Oddfellows Manchester Unity Friendly Society." There is a further question as to whether this is a contract which can be specifically enforced in a Court of Equity. I will take either one of these questions first.

Lord Justice Fry: Supposing you succeed on the point that the Injunction could not be specifically enforced, do you not destroy what you have said is the real object in view, which is to obtain a decision.

Mr. Clare: We want to have a decision on the rules certainly. I rather wanted to put my argument in a different way, but I do not object to being taken to that now.

Lord Justice Fry: I do not want to take you to that, only if our decision went upon a technical point, what I understand to be your object would be defeated, would it not?

Mr. Clare: I submit, my lord, that the point I am going to put to your lordship is not a technical question at all. First of all, I think I am right in saying that the only matters we can take into consideration for the purpose of saying whether there has been a contract for perpetual unity or perpetual connection between the parties, are the rules which were registered by us in 1873, because we have no other materials for coming to the conclusion that there was any contract whatever.

Lord Justice Fry: There is what is called the dispensation.

Mr. Clare: I will treat the dispensation.

Lord Justice Fry: And the certificate of admission.

Mr. Clare: I will treat those when I speak of the formality which takes place when the lodge is formed; but I will deal with the rules first of all, if your lordships will allow me to deal with the rules without going into the other questions at all. It is obvious that as soon as we registered these rules in 1873, we acquired a right, under the 27th

section of the Act of 1855, to make such alteration in the rules as we might think fit, having regard to the provisions of the Act of Parliament. The Act of Parliament, 27th section, provides that "after the rules of a friendly society shall have been so certified by the Registrar as aforesaid"—that is what has happened in our case—"it shall be lawful for such society, by resolution at a meeting specially called for that purpose, to alter, amend, or rescind the same or any of them, or to make new rules." We come within one definition or the other—that is to say, we are either a society formed under the particular Act, or we are a society formed anterior to that Act, and not under its provisions; but whichever body we are, and whichever our constitution is, that Act gives us a right to alter our rules.

Lord Justice Cotton: One is a definition of an Act—a society formed under this Act, the other is a society formed under the previous Act.

Mr. Clare: Yes.

Lord Justice Cotton: You do not show either.

Mr. Clare: I think we were formed under the previous Acts. Those Acts gave the privilege to certain societies of registering their rules.

Lord Justice Cotton: You never did.

Mr. Clare: That is so; but, of course, I submit that argument cuts both ways. Whatever our position may have been—we may have been a loose body, that is to say, a body or a number of people meeting at the same place—we were undoubtedly—I mean the assumption would be that we were up to the time when we registered under the Act of 1855—a body with no corporate or quasi-corporate or legal existence at all.

Lord Justice Cotton: You never had any corporate existence.

Mr. Clare: No; we were a mere number of people who chose to meet.

Lord Justice Fry: You were a part of a large society.

Mr. Clare: I take it, my lord, that one may still be a member of the University and a member of the University Club, and that is the distinction I have to draw in this case. But it does not follow that because individually we are members of the large society that we have not an independent existence as a part of the smaller. That is the argument I want to address to your lordships more fully on the other part with reference to the case as to what is the effect of initiation and admission.

Lord Justice Cotton: I think it is important for you to consider if this Act did require you to alter your original constitution.

Mr. Clare: That is my contention on this. One is rather apt, when starting on one point, to get off on to others. I have got now from the point I wished to deal with to the next point. My lords, my proposition is this, that if the rules which are registered under the Act of 1875 are the rules which tie us to the parent society—to the Unity—then I say we have, under this 27th section, a right to alter our rules; the words of the section are without restriction at all.

Lord Justice Cotton: I do not think these rules give the right to restrict you.

Mr. Clare: If that is the opinion of the court, I do not want to argue it any further.

Lord Justice Cotton: If you can satisfy us that that is so, well and good, but the difficulty I feel is this. You first existed as a society long before these rules, and then your society was only a portion of the persons composing the whole of the Order.

Mr. Clare: I was endeavouring, my lord, to deal with one part of my argument without mixing it up with another. What I understood was pressed against us by my friends on Saturday was this, that by reason of the auxiliary rules, we who joined the Bolton District did so for all time.

Lord Justice Cotton: That recognised what it was contended was so originally.

Mr. Clare: Of course, my lord, my point is this, that if the rule is made against me, we have power to withdraw the alterations. Directly it is said to me that the rules do not make against me, or if they do, then I have power to alter them. Then the reason why we are here is because we have passed a resolution under the Act of 1855 which, I think, is continued by the Act of 1875. That is the mischief of the Act of 1875, that we have in exercise of that power altered our rules, and then because we have altered our rules, or rather because we propose to alter our rules, the plaintiffs have brought us here into a court of justice and got an injunction against us. Now, my lords, assuming that I have got rid of the rules as the contract, or as the materials for inferring that there is a contract between us for all time, then comes the question, what is the effect of the dispensation and the form of initiation? Your lordships will remember that the form of initiation is something which does not preclude the formation of the lodge, but it is something which takes place after the lodge has been formed. At the time the lodge has been formed not a soul has been initiated into the lodge at all.

Lord Justice Cotton: I do not know whether we need go into the question of whether the Unity was formed before your lodge, but your lodge was formed. There were existing members of the Order, and to certain of those power was given to form a separate lodge.

Mr. Clare: I should rather like to tie your lordships to what you have just said about the power to form a separate lodge, because we are a separate lodge.

Lord Justice Fry: A separate lodge is not a separate society. That is the difficulty. The difficulty is not whether there is any contract between the lodge and the parent society, but what are the members of the lodge admitted to.

Lord Justice Cotton: I do not mean some society as indicating not a part of the Unity, but only that they are separate lodges—separate one from the other *qua* lodges.

Mr. Clare: I did not gather that your lordship meant to put it in any other sense. Now what I want to deal with first of all is the question

of the initiation simply, and I speak of the initiation performed by the officers of the lodge. It is obvious from the rules, and it is obvious from the lecture-book, that before anybody can be initiated, the lodge is formed; I think what has probably happened has been this ——

Lord Justice Fry: I doubt that, because the lodge dispensation is that it is to enable the brother—I forget who he is—to initiate somebody before the lodge was formed. When the lodge is formed, the new officers of the lodges acted as initiators.

Mr. Clare: I think the formation of a club is very much like it. You get a number of officers, who are already Oddfellows, to form a lodge, and the question pressed against me is what is the effect of their subsequently initiating persons into the Order? Of course, we are quite in the dark as to what actually took place when the lodge was formed, because it was in 1830, and it is absolutely impossible for us to find out. Now, if I am right in assuming—we have no evidence one way or the other about it, but what took place is this—that a number of Oddfellows, it may be five, or ten, or twenty, formed themselves into a lodge, and then initiated others. That particular initiation being subsequent cannot possibly affect the constitution of the lodge. I think if you take the dispensation and consider it, together with the initiation, the effect of the dispensation is this: It says, every individual who belongs to other lodges which profess to have any connection, severable or otherwise with the Unity, shall be initiated as an Oddfellow, that is, a member of the Unity. What we do is this: Instead of sending all these who want to join the different lodges—who want to join the Order—to Manchester, or wherever the head office is, for the purpose of being initiated, we say we will grant you a dispensation—that is to say, we will grant you a licence to initiate persons, and when they are initiated they shall become members of the Order. I take it that the dispensation grant would confer upon the lodge a benefit or a power rather than something amounting to a contract binding the lodge to the Unity; because in the rules of the Unity there are provisions that people once Oddfellows change into other lodges on certain terms. Therefore is there not something in a man becoming a member of the Unity, although he may have a distinct membership of the lodge. Is there anything necessarily in the dispensation—that is to say, the document which grants the lodge that power of making or initiating members into the Unity—which says the lodge shall remain tied to the Unity for all time? Surely this is a contract at will: there is no time specified anywhere in the dispensation which does not say that they shall have power to form a lodge on the condition that as long as the Unity lasts the lodge shall stay with it. There is nothing in the form of initiation which says that the lodge shall stay there so long as the Unity shall choose to keep it. The question would have arisen over and over again, because, I suppose, a hundred thousand persons must have been Oddfellows for a time, and then left the Unity. If the contract is with a lodge that it is to remain for all time, why is it not equally with a member that he shall remain for all time?

Lord Justice Fry: The dispensation is in this way: The officers and brothers of the said loyal lodge shall not deviate from the principles and regulations of the Manchester Unity of Independent Oddfellows, but shall in all and in every respect comply with these dispensation presents and laws, and them duly keep, observe, and enforce according

to the purport, true intent, and meaning of the Loyal Independent Order, or this dispensation shall be null and void." "And they shall take care that this dispensation be not altered, amended, or destroyed without consent of the Grand Master."

Mr. Clare: And the penalty is exclusion. Now, my lords, the point I was on was this question as to whether you can extract from that in any way a contract that the lodge was to remain tied to the Unity for all time. Of course they get themselves into this difficulty, but that is a contract not to be performed in the year. Of course if the contract is a contract at will, that is right enough, but if it is a contract to say that we are to remain for all time, it is another matter.

Lord Justice Fry: Is not the contract formed the moment the admission takes place?

Mr. Clare: No, my lord; it is a contract to do something which will not of necessity be entirely done within the year. Of course the contract is entered into as soon as the contract is made, but the question is, what is the duration of the thing to be done? We say it is a mere contract at will, a voluntary contract which may be altered or rescinded. We say that we may stay as long as we like, and if they have any claim upon us for contributions up to that time, or if they have any funds to pay us, or anything of that sort, it is an action at law. When your lordship comes to see what the working of this society has been, it has really been this, that with the exception of the funeral arrangements we have been to all intents and purposes quite an independent society. The funeral arrangements have been provided for in this way. The rules seem rather to contemplate that the funeral moneys should be paid by the district—that is, the intermediate body between us and the Unity—but as a matter of fact and practice, each lodge seems to have paid its own funerals, and then at the end of the quarter, or the half-year, whenever the time came for settling up, there has been a debtor and creditor account taken. If the lodge has paid more than it ought to have paid to its joint fund, it receives back the difference between the amount paid and the amount spent in the funerals. If, on the other hand, the claim is the other way, then there is a further payment. In no other way whatever have we been connected with the Bolton District branch. Now the lodge sends delegates there for the purpose of discussing delegate matters, but they have had no control over us. Their only right has been to see once every half-year what amount we have had to pay or receive—"come and pay," or "come and receive." It is not as if there was a common fund. What we were trying to do is this, to say we have been mutual insurers for an indefinite term, a term capable of coming to an end at the option of either party. We have now come to the conclusion that, subject to the liabilities—of course we could not go off in the middle of a quarter without providing for our liabilities in that quarter—we say we are tired of the connection between us, and we should like to be free and manage all our funeral business as well as our sick business ourselves.

Lord Justice Fry: I can understand where it is stipulated, possibly it would end the question; but independently of that, it would not seem to be inherent in the contract of mutual insurance that you should have a right to withdraw, because the result would be that the moment you obtained all the benefits, and there was a risk in the venture, you would withdraw.

Mr. Clare: In this particular case I do not think, my lord, that there can be any question of obtaining a benefit—for this reason, that the insurance is an insurance for each quarter in regard to funeral money. What they have done is to adjust matters every quarter, and take an account in all the lodges of all the money, and then to take an account the one from the other.

Lord Justice Fry: The payments that have been made give the right to this funeral money on the deaths.

Mr. Clare: Yes.

Lord Justice Fry: Then if you withdraw now, those who have made that contribution will have no right to go to the district at all.

Mr. Clare: Quite so.

Lord Justice Fry: In that case the contract is a separate one—the one from the other—the contract being if you die within that year, there is no contract beyond that.

Mr. Clare: Then there is the Statute of Frauds.

Lord Justice Bowen: If you are bound by a contract not to secede except in a particular way, that has nothing to do with the case.

Mr. Clare: If I am asked to argue on the assumption that there is a contract that I am not to secede, it is a different thing.

Lord Justice Bowen: Of course the whole question is, whether there is such contract.

Mr. Clare: That we could not secede?

Lord Justice Bowen: Yes, or that you shall secede in a particular way.

Mr. Clare: That is what they have attempted to put upon us by the new rules.

Lord Justice Bowen: That is what it appears to me to be, and it has appeared to me all through.

Mr. Clare: Throughout the whole of the rules that we have been able to get hold of, it is evident that the Unity has recognised from time to time that there is a power to secede on the part of the lodges.

Lord Justice Bowen: Not after the rule was passed, but before the rule was passed.

Mr. Clare: I am taking the old rules, the rules of 1871.

Lord Justice Fry: I am convinced that they do nothing more than recognise the fact, as sometimes happens, whether it is right or not. I am not very clear, but that does not seem to be the real question.

Mr. Clare: The real question, of course, is this, as I understand it, whether there is a contract which prohibited us from seceding?

Lord Justice Fry: I do not think that is the question. I think the question is, did the members of this lodge become members of the Order, and have they agreed to give to a particular section of those members any right to go away from the body?

Mr. Clare: I will concede at once that the members of this lodge did undoubtedly become members of the Order individually.

Lord Justice Fry: And nothing else?

Mr. Clare: And nothing else.

Lord Justice Bowen: That would not, as far as you are concerned, settle it.

Mr. Clare: Of course the contract must be a contract prior to 1855. I do not know where the contract is, beyond the mere fact that the individuals have joined the branch. I do not know where you can derive a contract that we are not to secede, because if the contract is to be derived from the fact that all the members have become members of the Unity, then if those members can retire individually from the Unity, why should not they all retire?

Lord Justice Fry: They cannot carry the money with them. If they like to give up their payments and leave the money, it may well be that they can retire: but the point is, that you insist upon carrying the money with you. The money is the money of the Order. What right have you to take it away?

Mr. Clare: I submit that the money is not the money of the Order. The Order has clearly no control over the funds. The Unity could not go and commence an action against us for breach of trust or anything of that sort.

Lord Justice Fry: You must not assume that.

Mr. Clare: There is nothing in the constitution, because they have absolutely nothing whatever to do with the sick fund.

Lord Justice Fry: They have delegated to a certain body of their members the power of disposing of that fund.

Mr. Clare: I do not know where there is anything which shows that they have delegated any control over what, I submit, is the lodge's own fund. But the funds have never yet become the funds of the Unity; they are not administered by the Unity; the only thing that we are doing between the Unity and ourselves is, that we have entered into a contract that we will, either in perpetuity or for a time, terminable at will upon certain terms, administer the funds as far as sick benefits are concerned. They have got absolutely no control over us, and have nothing whatever to do with us. As far as the individual members are concerned—and as to that, of course, there are different considerations arising—with reference to that I should say that the only contract there is between the individual members—because I do not wish to deal now with what was suggested by your lordship yesterday—the only contract whatever between the members of the lodge is the contract which is contained in the rules. The Act of Parliament for 1855 gives power to a certain majority upon certain terms to alter those rules.

Lord Justice Cotton: Have you got any altered rule certified by the Registrar?

Mr. Clare: No, we have not.

Lord Justice Cotton: We cannot regard anything as a rule until it is certified by the Registrar.

Mr. Clare: The object of this action is to stop us from registering.

Lord Justice Cotton: It is to prevent you from registering otherwise than as a lodge; but you are registered under that Act.

Mr. Clare: What it prevents us from doing is, from getting the new rules approved.

Lord Justice Cotton: It is whether you can register with the power of altering your rules so as to sever yourselves from the Order.

Mr. Clare: We ask your lordships to decide that question.

Lord Justice Cotton: Then as the mere fact that you have power to make a rule which is legal, and which if adopted will be binding, I do not see how that affects you.

Mr. Clare: My point is this, if we have power to alter the rules we do it under the Act of Parliament. It does not say we shall have power to alter certain rules and not others, but gives us the power.

Lord Justice Cotton: I should like you to consider that point. The admission is a strong point against you to my mind.

Mr. Clare: I submit that as long as we have registered our rules we have registered the only thing which constitutes a contract between the different members.

Lord Justice Cotton: You want to register yourselves as a separate society before you have got the rules certified by the Registrar. I should very much doubt whether you could pass a rule to alter the constitution of your society, so as to make your society independent of the Union. You are wanting to get power to do that because you have no power.

Mr. Clare: Undoubtedly we can do that upon certain terms. There is no question about that, therefore the mere doing of it is not illegal. The whole of my argument will be for the purpose and object of suggesting to your lordships that we always have had that power of separating from the society when we liked.

Lord Justice Cotton: It all goes back to the one point. Is the constitution of your society such, that a member can prevent you from depriving him of the security which he has in the district? Is there anything which enables the other lodges in the district, if they are in poverty, to call upon you to contribute? Suppose the other lodges are in failing circumstances, can they call upon you to contribute?

Mr. Clare: I think not, my lord, except so far as funerals are concerned, and then not because they are in poverty.

Mr. Cozens Hardy: The very object is for making levies upon lodges for granting temporary relief to lodges or members in pecuniary distress, and to assist lodges unable to meet their engagements.

Mr. Clare: That is the district.

Lord Justice Cotton: How is the district to make a rich lodge contribute?

Mr. Cozens Hardy: The district only raises funds by levies from the lodges.

Lord Justice Cotton: Where is that power?

Mr. Cozens Hardy: It is rule 44: "The management expenses of the district shall be equalized for each lodge to pay its share according to the number of its members;" that means, the available fund the lodge has to disburse in order to carry out its object, and it has to be levied on each lodge.

Mr. Clare: My friend is reading from the rules of 1881. If we are bound by the rules of 1881 there is an end of the question altogether.

Lord Justice Fry: But was not that the practice with regard to districts before?

Mr. Clare: I have no instructions one way or the other about that.

Lord Justice Fry: I have here the rules of 1875, "The District Management Fund."

Mr. Clare: Is not that the management fund? The question that was put to me was this: Is there any means by which a lodge in failing circumstances can call, either through the medium of the society or otherwise, upon another lodge to help?

Lord Justice Cotton: Is there any means of enabling a district to call upon a lodge, or the Unity to call upon the district?

Mr. Clare: I am not aware there is, unless your lordship should hold that those rules which my friend, Mr. Hardy, has referred to, do so enable it.

Lord Justice Bowen: What about the funeral fund?

Mr. Clare: The funeral fund is not a question of a rich lodge or a poor lodge at all. What happens is this with reference to the funeral fund. There are many funerals all over the district in the course of a quarter or half-year: then the funeral money is all added together; then it is ascertained how much per head all the members of the different lodges in the district will be required to provide for that gross funeral fund; then the levy is made by the district upon the different lodges for the purpose of providing that.

Lord Justice Bowen: The part that we are discussing now is assuming there is a contract between all members of the Order that they shall not secede except upon terms. Then we are considering what the members of the Order are entitled to under the Act. Supposing there was the cholera in one district and not in the other. If there is no right to

secede the members of the other district would have an interest in holding you to your bargain not to secede.

Mr. Clare: I concede at once that the other lodges have an interest in keeping us in the district, but the question is whether they have any right to do so. That is another matter entirely.

Lord Justice Fry: If I followed you rightly the funeral fund is in this way: "All lodges in this district shall join in paying the funeral expenses thereon. The amount paid during each quarter shall be divided into an equal rate per member, and charged to each lodge according to the number of its members." Therefore every member in the district pays his funeral fund not according to the deaths in his lodge, but in his district. Therefore they have a strong interest in retaining you.

Lord Justice Bowen: We were discussing for a moment that if there was a contract, the outstanding lodges or districts beyond you had an interest in helping you.

Mr. Clare: Admittedly they had an interest. Of course a poor lodge has an interest in having a rich lodge there; there is no doubt whatever about that; but the real question is whether they have a right to do so. What I submit really is, that there is nothing of the sort.

Lord Justice Fry: There is another right, which is this: "That should any lodge in this district close for want of funds, or circumstances over which a portion of the members have no control, thus leaving members entitled to be placed upon the district as district members, such members shall become chargeable to the funds of the district." The result of that would be, supposing a poor lodge in the Bolton District closed, the members of the district lodge, as such, would be entitled to a contribution from the Caledonian Lodge.

Mr. Clare: No; and I will tell your lordship why. There are individual members of the district, and individual members of the Unity, and I think that your lordship will find this: that whenever a lodge becomes closed by reason of its poverty, or whenever a lodge secedes and there are a number of dissentients that will not go to the seceding lodge, there are provisions in the old and new rules to deal with that. I take it that so far the fund (excluding the funeral fund) to which they are contributed, and from which they are to be benefited, are not funds to be provided by outside lodges or outside districts, but are funds to be provided by the members *inter se*. Will your lordship look at the rules? I do not think it is the same in the old rules when they speak of Unity members. I think the effect of those rules is that, as each lodge drops off by reason of say poverty, or because there are dissentients from the seceding lodges who still wish to remain in connection with the Unity, those persons are added to and become members, and so form a circle who contribute to a fund in which they have mutual benefits.

FOURTH DAY.—6TH APRIL.

Mr. Clare resumed his arguments in support of the appeal, and referred to the Statute of Frauds as applicable to the case, contending that if the contract in question was one which was not to be performed within the year, then it was in the nature of a continuing contract,

which ought to be in writing signed by the parties—also that it was either a contract for mutual guarantee for indefinite time, or it was a question of partnership or quasi partnership. After considerable discussion on the point, their lordships conferred, and

Lord Justice Cotton then said: You mentioned in opening that the district not only made contributions to assist poor lodges, but made contributions to the Order as fixed by the Order. Can you tell me which rule it is of the Order that enabled that to be done?

Mr. Romer: I cannot, my lord. I was acting on instructions on my brief as to that.

Lord Justice Fry: Yes, and I have no doubt you were quite accurate.

Mr. Cozens Hardy: I think your lordship has the present rules?

Lord Justice Fry: It begins—"Any district or Unity may form," and so on.

Mr. Cozens Hardy: I think it is page 30.

Mr. Romer: It is rule 26, page 30, of the Order rules of 1882.

Lord Justice Fry: I rather think it is rule 27—"Each district of the Unity shall have a management fund, which shall be raised and maintained," etc. They have a district fund. Then is there anything about the Unity and management levies in the rules besides that?

Mr. Cozens Hardy: At the top of page 32 it says "levies are to be made for the assistance of deficient lodges."

Lord Justice Bowen: What does that mean—the Unity Sick and Funeral Fund? How is that used?

Mr. Cozens Hardy: That is at page 30. Each district in the Unity shall form a funeral fund. That is called the "District Sick and Funeral Fund."

Lord Justice Bowen: That is the district.

Mr. Cozens Hardy: It is page 20, my lord—"A fund shall be established to be called the 'Unity Sick and Funeral Fund,' to which every district shall contribute one halfpenny per annum for every member good on the books on the 1st of January. From this fund the sick pay and funeral benefit of Unity members shall be paid; also the assistance to be granted to distressed lodges and districts."

JUDGMENT.

Lord Justice Cotton: In this case there are concerned a great number of individuals, members of societies which play a very useful part in England. The case has been argued fully, and I think we ought not to delay giving our judgment upon it. The action is one with reference to the Order of Oddfellows, and the defendants—I take their position first—are the members of a lodge who desire to secede from the Order, and to withdraw themselves entirely from that union which existed between

the different branches of the whole Order of Oddfellows. The plaintiffs on the other hand are the Unity, the centre: they represent the districts, and they represent some of the members of the lodge, who dissent from the course taken by the majority. How the Oddfellows Union originally arose we do not quite know; that is not very plain. But at any rate when the defendants' lodge was formed there were Oddfellows, and there were undoubtedly other lodges and other districts; and, as far as I understand, the Oddfellows thus admitted to the Order may originally have been admitted. At this time everyone who joined the lodge was admitted as a member of the Union of Oddfellows, and at the different lodges formed in this way dispensations were granted by the Central Body, and then some of the persons (already members) were allowed to form what is called a lodge, with power to initiate into the Order new members, and then those would become members of the lodge, but at the same time they would be initiated into and become members of the Order. That is most important for consideration, because every member of this lodge is not a member of the lodge by itself, but being admitted as a member of the Order he becomes a member of the lodge; that is to say, a certain portion of the members of the Union to whom the regulations of the Union had given a *quasi* separate action—a *quasi* separate existence. That is to say, that the lodges had a power to a certain extent of regulating their affairs, and the lodges are separated one from another, and have power to a certain extent to regulate their affairs. All the lodges formed part of the districts, and all the districts formed divisions of the Union; and what I understand this society is, is this, that funds are provided by contributions of the members of the different lodges for certain purposes; then a portion of these contributions for funeral expenses are handed over to the district. The district provides in the first instance for the funerals, and then there are contributions and payments to each lodge when necessary, in order to make up what ought to have been, having regard to the number of funerals in the year, their quota. There are now no original members, or for many years there have been none of the centre, the Unity, but if any lodge fails, any members of that lodge being also members of the Order, as they must necessarily be, having duly performed their duties, fall into and become members of the district. When districts fail in like manner the members who have become members of the district fall into and become members of a Unity. Therefore, in fact, we have these different societies regarded as friendly societies, and providing for their members in this position; that there are funds of each lodge; if those fail there is the security of the district; if the district fails there is the security of the central body, the Unity. That is a most important consideration, because it is not only the funds of the separate lodge on which the members have to depend, but there is a guarantee, as it were, to provide for the event of those funds failing by the district, and finally by the central body. Now, in my opinion, having regard to these facts, the case of the dissentient minority is conclusive here, because the dissentient minority say, "I joined the lodge and I have been paying my money to the lodge on these terms: that I have the benefit which the lodge could give me; if the lodge fails I have the additional benefit which the district can give me; if the district fails I have the benefit which I can have from the assistance rendered by the Unity—by the centre." In my opinion that would entirely have settled that question; because, what are we considering here? Here this lodge, for reasons of its own, wishes to secede from that body—from that union—wishes to secede from the district, and wishes to secede entirely from the

Unity. In my opinion any member who has contributed his funds to a benefit society of the nature of which this lodge was when he joined it, has a right to say: "Do not turn that which I joined into something entirely different; do not deprive me of the benefits which I have from the rules of the Unity, and from the intercourse between the lodge, the district, and the Unity." I should mention, before I leave this part of the case, that it appears not only that the funds are contributed by the lodge to the district, but also that funds are contributed by the district to the Unity. Then there are other matters here which are of importance. That, to my mind, as I have already mentioned, is sufficient to decide the case; and, to my mind, it is the strongest case for holding that the decision of the Vice-Chancellor is right, and I should be quite content to decide it upon that case. But other points have been argued, and I believe my brothers will deal with those points. I in no way differ from them, therefore I will express my opinion shortly on these points. Everyone, when he became a member of this lodge, as I said, became initiated into the Order, and he promised on his initiation to obey the rules from time to time made by the central body. Now, what happened here? We have a rule providing for the secession and breaking-up of branches; and, whether or no there was a right before that to secede, in my opinion, there being a power to make rules in the central body, that was a rule which it was reasonable and proper for them to make. Because, what does it do? It says that if any branch shall secede—and the district has a similar rule—it shall only do so after providing for its liabilities to those who have joined it when it was intended to be one of the lodges of the Unity. Whether that was a right of secession or not, that rule was passed years ago, and, as far as we can understand, was not dissented from by this lodge or by other lodges. This lodge is the only one we can now consider. That rule being passed by what was called the Annual Movable Committee, which consisted of members selected from the different districts of the Oddfellows, in my opinion we must consider that rule as one which this lodge has bound itself to abide by, and, in my opinion, it was a rule clearly within the power of the Annual Movable Committee, whether or no, antecedently to that rule, there had or had not been a power of seceding from the Order. Therefore, in my opinion, as each member, when he entered the Order—when he was initiated into the Order—promised to abide by such orders and rules as might from time to time be made by the Annual Movable Committee, this is one which this lodge or its members are bound to obey, and, in my opinion, the Vice-Chancellor was quite right in holding that they were not entitled to treat this as a separate body, that is to say to secede, as they intended to do, from the Union without following the provisions prescribed by the rule. This rule, "F," I think, which applies to secession and breaking-up of branches, is a rule of the existing body in the district and in the Unity. Now, that settles the case to my mind. It is contended that what they were going to do was to register under the new Act, and that if they so registered not as a branch they would have the power of passing a rule so as to bind their own members to enable them to act separately. But they have not so registered, and their own registration was a registration not of themselves as a separate society but of the rules of the Caledonian Lodge, No. 418, of the Independent Order of Oddfellows Manchester Unity Friendly Society; that is, recognised as a lodge of that Unity, recognising the position which, in fact, they occupy, not a position of independent action, but simply a connection of certain members of the Unity—members initiated

into the Order. But that, so far as the power was delegated to them, was a power of making rules to regulate their own proceedings, but all subservient to the general rules of the district and the general rules of the Order. There was a registration of such a nature as that, and I do not see how, if any rule were passed to give themselves another and separate existence, that rule could be one which could be sanctioned as duly passed by them, when in their registration they have registered themselves as a branch only of that general Unity, as a branch of Oddfellows subject to all the rules and regulations which they agreed to submit to when the lodge was formed, when each and every of its members joined that lodge. In my opinion the appeal fails. There is one point which, perhaps, I ought to mention. It was contended that whatever the rights of the parties might be, yet the conduct of the central body had been such as to prevent their getting assistance in the way sought. In my opinion that is an erroneous view. The whole contest between the lodges and the centre was, can the lodges sever and set themselves up as separate and distinct societies? That was the point between them, and as the only object of the central body was to prevent that being done, as the only object of this lodge was to enable them to sever, in my opinion the lodge was in the wrong and not the central body when it required them, as it did, to register as a branch and not as a separate society. Of course that involved the putting an end to and cancelling the registration which they had already got under the Act of 1851. In my opinion there was nothing unreasonable in that, the object of both sides being in substance that which I have mentioned. In my opinion there is no ground, as the rights are what I have stated them in my opinion to be, for refusing the relief here which has been granted by the Vice-Chancellor.

Lord Justice Bowen: I am of the same opinion. It seems to me that when you get to the bottom of the case it determines itself by the application of the very simplest principles of the law of contract, All members of this lodge are members of the Order. That is fundamental. By the act of initiation they become members of the Order grouped in a particular lodge, and promise that they will to the best of their ability conform to all rules duly passed by the authorised committee of the lodge, district, or Order. The district and the lodge are not different incorporations. They consist of an aggregate of individuals all of whom belong to the Order. That is the cardinal point of the whole matter to my mind. The members of the Order may group themselves into lodges and into districts, and each district viewing itself for that purpose as a centre, and each lodge viewing itself for that purpose as a centre, for the moment may acquire by registration a separate existence; but if they do it is only a separate existence *quoad* themselves as a district and its lodges, and it neither destroys nor affects in any way their outstanding obligations to the Order of which they are members, and to a group of members to which they belong—to a larger body. They cannot by anything they do to themselves as a group, destroy the contractual obligations which already exist between themselves and the larger body. Now let us apply those principles. What have we got in the first place? Why, we have got the fact that the funds contributed to the lodge are by their own rules funds in the management and in the distribution of which the lodge—that is to say the group of members forming the lodge, the district, and all the other members of the Order, have some interest under the rules: they have varying interests, but they all have got some interest. Now, was there an original power

of secession when this district and this lodge was created? Mr. Romer and Mr. Clare, with great clearness and ability, have told us this morning and yesterday that there must be an original power of secession, both upon the practice, by which it appears, and by virtue of which it is supposed, that some secessions took place, and also by the application of the Statute of Frauds. Be it so. Let us assume that they start with general powers of secession, that is to say, that you could not compel members of the Order to go on continuing members of the Order if they chose to cut themselves adrift. It may be so. But where do they get the right, if they secede, to carry away the funds, in the management of which the district to which they belong, and the lodge to which they belong have already acquired some interest? They cannot do that: they are breaking the law of contract. If they wish to set up an independent lodge, they cannot take the funds which have been devoted to one purpose, and which have been intended to be carried out in compliance with one set of rules—they cannot abrogate the rules, and set up a lodge with the same money on their own account. That is really to take the money of one person and to devote it to objects which are determined upon by another. It is as clear to my mind as daylight that by so doing you are interfering with the rights of the dissentient minority. The dissentient minority contributed their funds, not in order that they might be made into the funds of a lodge which had no connection with the Order, but in order that they might be administered by a lodge which was a sub-branch of the Order. It is an attempt to cut adrift the lodge from the Order, and to carry with it the funds which have been dedicated, so to speak, to the carrying out and the working out of the objects of the Order. But it seems to me, applying the same principle to the members of the district and the Order, that all have an interest in the management of the funds contributed by the lodge, though the interest of the members may be more remote—I mean the members who belong to other districts and lodges may be more remote—still they all have an interest and a right to have a voice in the matter. I think that consideration is decisive of the case. But there is another matter, to my mind equally decisive of it, and equally plain by the application of the simple principle of the law of contract. The Order to which all these lodge members are affiliated, to which they all belong, passes in the regular way by the constituted authority of the Order, which authority receives a contingent of deputies who really represent this lodge as well as the other lodges—the Order passes a rule, and, indeed, the district does just the same—it passes another rule which regulates the mode in which secessions are to take place. Now, considering the interest of the Order and the district in the funds, how can such a rule be said to be *ultra vires?* How can the Statute of Frauds have anything to do with it? It has become one of the accepted rules of the Order in every case. Every subscription which has been made since the time it has been passed has been made on the faith that the members of the Order all accepted it, and every initiation that has taken place since has taken place on the footing that that rule is a rule of the Order. Those who were initiated previously if they had objected to that rule, or if they had got any ground of objection to it, ought to have said so at the time. It is clear to my mind that after the passing of that rule no member of the Order, whether he belongs to a lodge or not, has a right to initiate the secession of a lodge or a district except upon the terms of those rules. He breaks his contract if he does, and the lodge, which is a created body of individuals, break that contract if they attempt to break

that rule. There was a third point taken, as to whether or no we could grant this injunction in consequence of the conduct of the Order in insisting upon the registration of this branch lodge, the branch that did not choose to register, and did not think that it was bound to register under that particular Act. I agree entirely with what the Lord Justice said. To my mind that is a rule which the Order had a right to pass, but, be that as it may, it was accepted by the body, and it is too late now to complain that the members are not bound by it. I consider this a very clear case and one that requires the application of no recondite principles.

Lord Justice Fry: The importance of this case induces me to add a few words to what has been said by my learned brethren. The main, if not the only question in this case has throughout appeared to me to be this: Upon what terms did the persons who became members of the Order, and members of this particular lodge, become such members. There are three documents which have been put before us which throw the greatest light upon my mind in that enquiry. The first of those is what has been called the dispensation, which was, in fact, an authority given by the then members of the Order to certain officers and brothers of the Order. to admit other persons as brothers of the Order (to use the language of the dispensation), which authorized them to constitute the brothers so made to be a particular sub-organisation of the Order or lodge. But this dispensation provided that the officers and brothers of this new lodge should not deviate from the principles and regulations of the Manchester Unity of Independent Oddfellows, but "should in all and every respect comply with these dispensation presents and laws, and them duly keep, observe, and enforce, according to the purport, true intent, and meaning of the Loyal Independent Order, or this dispensation shall be null and void." Further, the Order by this dispensation undertake in the case of the lodge being destroyed by fire or other accident, to render assistance to the distressed of the lodge. Its object to my mind was really to admit persons as members of the Order, not to admit them as members of any separate society. The next document which seems of any importance in this society is this. There is a form of certificate, which has been put before us, which was signed and given to the members as they were admitted to this Order—to this lodge. It is a certificate that brother so-and-so was admitted a member of the Independent Order of Oddfellows, Manchester Unity Friendly Society, by initiation in the particular lodge. There, again, it is obvious the certificate indicates the admission of the member as a member of the Order. Lastly, there is the form of initiation which has been put in evidence before us, which, to my mind, I confess, seems to become really important as regards this question. After other preliminary enquiries, as to his name and so forth, the Lecture Master, who was the officer presiding at the initiation, addressing the intended candidate, asks him whether he will, to the best of his ability, conform to all rules duly passed by the authorised committee of the lodge, district or Order. To that the member, if he is to be admitted, must give a reply in the affirmative. The same principle runs through the exhortation given by the Lecture Master to the candidate. He is to do everything which will promote the advantage of the Order, and, throughout, the welfare of the Order is the object of the anxiety and care of those who prepare these rules for the initiation. But I return to the words which I have already read, the promise to conform to all rules duly passed by the authorised committee of the Order. That is one of the promises made by every member. It seems

to me, then, that the only enquiry is this—are these members, if they are carrying away with them the funds of the lodge, conforming to the rules duly passed by the authorised committee of the Order? The answer to that is plain. The authorised committee of the Order has passed a rule that they shall only secede upon certain terms. That rule this body of members, each of whom is common to that promise, do not propose to obey. To my mind that is an end of the case. But I will go further, and I will enquire what is the nature of the terms upon which, according to the contract between the parties, the fund which is primarily under the management of the lodge is to be administered. Undoubtedly it appears to me that every member of the lodge has a primary interest in the fund; it has been contributed for their common benefit, and a dissentient member has a right to say, it appears to me—a member, that is to say, who dissents from the proposed secession has a right to say, "I have contributed to this fund, and you have contributed to this fund, upon terms of its being administered in a particular manner. In the administration I have an interest. I insist upon my right to relief in sickness, and to the right of those who follow after me, to the terms of payment on my death, in accordance with the bargain we have entered into. Without my consent you cannot depart from that bargain, and although it is competent for you to leave the society, it is competent for you to leave it only on terms of leaving behind you those contributions which have been made for my benefit." To my mind that is a very plain right of the members in regard to this proposed secession. But I think, also, the district has a clear interest in the fund, for this reason, that the district has a fund which was to provide for the funeral expenses of the members of the lodges within that district. This is to be a fund provided equally by the lodges. Therefore each lodge in the district has a right to say to the other lodges, "We have combined together for the purpose of constituting the fund, and you have no right to carry with you any portion of that fund which has been contributed to with a common object." I think that probably the district members had a further interest, because there was a system of travelling cards, which, if I rightly understand, gave the member of one lodge, who was travelling in the district of another lodge, a right to relief in the event of his being distressed. That is not so material, but it appears to me also to give them an interest in the district funds. Lastly, I think the members of the Order who were neither the members of the particular lodge, nor the district to which the lodge belonged, had an interest in this fund, because, as was distinctly pointed out by Mr. Romer in his opening, the Order has a right to contributions from the district—has a right to make what are called levies, and those levies are for the benefit of all the members of the Order; therefore, although the interest of the district members is not so direct, and perhaps not so immediate as that of the lodge members, I think that every member of the Order of Oddfellows has a certain interest in this fund, which is administered and managed primarily by the committee of the lodge. I think, therefore, that there was no right whatever to secede in the manner which has been suggested. Now it has been argued that the registration which was effected in the year 1873 under the Act of 1855 of this particular lodge, giving as it did to the lodge the power to vary its rules, gave to it a power to make a new rule which should constitute it an independent lodge. That I understand really to have been in substance the argument addressed to us yesterday by Mr. Romer. In my view that is entirely a fallacious argument. The power to vary the rules given by the Act of 1855 does not enable any society to depart from its contractual obligations; does not enable

the particular members of this lodge, who are really members of the Order, to depart from the relations which they had entered into with the Order. And they must submit to the obligation of the contract. Then it was said again that whatever might be the capacity of the lodge to secede, nevertheless the conduct of the Order in this case was so unreasonable that the court ought not to interfere by granting an injunction. When that is looked into it appears to come to the old question in a new form. It appears that on Whit-Monday, 1883, a resolution was passed by the Annual Movable Committee, delegates to which came from this lodge in question, which required that the members of this lodge, and all other lodges, should register under the Act of 1875. The lodge in this case said : " We will not do anything to affect the registration of 1873 under the Act of 1855, because it created us a separate lodge, and if we register ourselves under the Act of 1875 it will place us in a subordinate position as a member of the Order." I think the answer to that is very plain. Registration under the Act of 1855 did not constitute them a separate body, therefore they had no separate existence to protect. I think the question, although raised in that form, is only the old question whether the lodge had a right to secede or not—whether it was a separate body. Finally, I will make this observation. It has been attempted this morning to say that some objection can be found in the Statute of Frauds. We have not entered into that argument because after the delay which has taken place, and after the opportunity which we gave to both parties to adduce such evidence, no evidence having been adduced or put in on that point, and there being no pleadings, we thought it was too late to enter upon that point. I therefore agree, for the reasons I have given, that the order of the Vice-Chancellor is right, and that this appeal must be dismissed with costs.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *secs.* 11, 68, 78-83.

CASE 226.

STOURBRIDGE COUNTY COURT. 1856. *Nov.* 7.

IN THE MATTER OF A PLAINT IN THE COUNTY COURT OF WORCESTER, HOLDEN AT STOURBRIDGE, BETWEEN MEREDITH & WHITTINGHAM, AND OTHERS.

A friendly society enrolled its rules in 1832, under the 10 Geo. IV., c. 57, and shortly afterwards framed new rules, which were never enrolled or certified.

In an action in the County Court, by a member against the stewards for sick pay.

Held that the society was a subsisting society under the original rules, by virtue of the 18 & 19 Vic., c. 63, s. 2; and, consequently, that the County Court had jurisdiction, under the 41st section of that Act.

CASE 227.

HIGH COURT OF JUSTICE, QUEEN'S BENCH DIVISION. 1886: *March* 28. *Before* A. L. SMITH, J. GRANTHAM, J.

DUNKLEY v. HARRISON.

Friendly Society—Claim for Sick Pay—Rules—Specific Sickness—Funds cannot be applied to other purposes than those expressed in the Rules.

Held that a member who was unable to work merely from old age without any illness had no legal claim to relief.

In the Queen's Bench Division on Monday, 28th March, 1886, before Mr. Justice A. L. Smith and Mr. Justice Grantham, sitting as a Divisional Court, this case came on for argument. Mr. Toller said this was an appeal, on a case stated against the decision of the justices of Leicestershire. The appellants were the stewards of the Ullesthorpe Friendly Society, and respondent was one of the members of the society. The question which arose in the case was whether under a certificate given in the case, respondent was entitled to sick pay. The club was formed under 13 & 14 Vic., c. 119, and its objects were "to raise funds by subscriptions and donations for the relief of benefit members in times of sickness and to secure a certain amount at death." Respondent was, and had been, a member of the society since its formation; he was 80 years of age, and blind in one eye. The rules said that every member after he had paid contributions for 18 months, falling sick, lame, or blind, or being otherwise disabled from work, should be entitled to receive 7s. per week for 16 weeks, and half-pay of 3s. 6d. per week afterwards. For 16 weeks prior to June, 1882, respondent had full pay, and from that time to June, 1886, he had half-pay, but from the 12th of July in that year he was refused half-pay, and the reason alleged was that the certificate which he then produced was not in accordance with the rules. The surgeon said he "continues unable to work by reason of natural decay." The stewards said that was not sickness, and as the society was not established to grant pensions to its members they refused to pay. The magistrates decided that the respondent's condition was included in the words "otherwise disabled from working," and made an order on the stewards to pay the money. He (Mr. Toller) now contended that these words did not bring the case within the rules, and if the court so contended, all the old people belonging to the society would rapidly become unable to work, and the funds of the society would be exhausted. Mr. Justice Grantham: You gave him half-pay for four years without saying anything? Mr. Toller: Yes, because the certificates from the doctor would not allow us to do anything else. The moment he said that "he continues unable to work by reason of natural decay" they stopped the pay. No one appeared to sustain the order of the justices. Mr. Justice Smith said in his opinion the rule of this society did not apply in cases of incapacity from mere old age. The rules were simply framed to meet cases of sickness or incapacity arising therefrom; not incapacity arising from old age. The certificate of the doctor in this case showed that the respondent was suffering merely from old age, and therefore the decision of the justices was wrong, and must be reversed. Mr. Justice Grantham concurred. Appeal allowed.

CASE 228.

CHESTERFIELD COUNTY COURT.

1877. *Feb.* 15.

LONGDEN *v.* BALL.

Friendly Society—Claim for Sick Pay—Working when in receipt of—Rules—Expulsion—Claim allowed.

On February 15th, 1877 (W. F. Woodforde, Esq., judge).—John Longden *v.* Josiah Ball and George Wagstaff.—The plaintiff, who is a member of the Loyal Covenant Lodge of Oddfellows at Brinley, near Eastwood, claimed the sum of £6 4s. for arrears of sick pay, it having been, as he alleged, illegally withheld from him. The plaintiff, who is 74 years of age, and to all appearance totally incapable of earning a livelihood by labour, in the course of his statement said that he had been for some years a member of the Loyal Covenant body of Oddfellows at Brinley, near Eastwood, and latterly he had lived at Clay Cross, where he had a small garden, but which he was not able to work himself, and from which he did not derive any profit. He was on the sick and aged pay list of the lodge, and had been in receipt of his regular allowance until very recently, when the lodge passed a resolution to the effect that he should forfeit one week's pay, and be suspended for a period of three months, on the ground that he was working for his living, which he was not allowed to do in accordance with the lodge rules, but this he denied. An appeal was made against this resolution, and plaintiff was summoned to attend a meeting of the lodge to re-hear the case. This, however, he could not do, because, as the lodge was nine miles off, he was so physically incapable as to be unable to attend himself, and had not the pecuniary means of sending anyone to represent him; and the consequence was that the original resolution was rescinded, and another one was passed depriving plaintiff altogether of the benefits of the institution, and in fact dismissing him from the society. Several witnesses were called to show that the plaintiff was not working for his livelihood, and in fact was utterly incapable of doing so. A boy who had worked occasionally in his garden for two years, said that plaintiff had derived no pecuniary benefit from his garden, beyond perhaps selling now and then one or two pennyworth of herbs. Another witness, Mr. Haslam, an officer of an Oddfellows' lodge, and the relieving officer of the Clay Cross District, also bore testimony to the fact that plaintiff was unable to work for his living; he had also gone to the lodge, and had been at considerable trouble to protest against its action in the matter. —Mr. Gee, who appeared for the defendants, the Trustees of the Loyal Covenant Lodge, contended that the plaintiff had actually and palpably acted in contravention of the rules of the society, which provided that no member in receipt of pay should be allowed to be engaged in work of any kind; and called two witnesses, officers of the Stephenson Lodge, Clay Cross, through which the plaintiff received his payments, who stated that they had on one occasion seen the plaintiff watering his garden, although they could not say whether there was much or little water in the watering can, and that they had, in the interests of the society, cautioned him against working in any way whatever, and had withheld his payments in accordance with instructions from his lodge. —His Honour, in giving judgment, said the case was invested with more than ordinary interest. The Manchester Unity of Oddfellows had ramifications throughout the whole country, and he therefore thought it desirable to sift the matter fully before giving his decision, and therefore he had gone through the evidence with very great care. He would be

the last to give any decision affecting adversely such a society as this was, unless it was perfectly clear to his own mind that he was justified in doing so. He could not help knowing, from reading the papers and hearing speakers high in authority on these matters, that the Unity Lodge of Manchester had the greatest reputation of any lodge of Oddfellows in the kingdom; at the same time it was for him to look to the particular facts of the case, and act upon them. The facts of this case, to him, were very simple. The plaintiff had been a member of a lodge belonging to the Manchester Unity for a great number of years, and having changed his place of residence he had come under the jurisdiction of the rules of a particular lodge called the "Stephenson" Lodge, having originally belonged to the Loyal Covenant Lodge. After his removal he had become ill and entitled to receive sick pay, which it appeared he had done for eight or nine years; and that he had been more or less unable to work during that time there was no doubt. Within the last two years he had been utterly unable to work at all, and that fact had been spoken to very strongly indeed by the relieving officer of the district, and it had not been disputed by Mr. Gee, who, he (his Honour) must say, had conducted his case very temperately and with ability. For two years the plaintiff had been unable to let himself out to work any sort of way, and from that time had consequently been receiving full sick pay. Some intimation was given to some members of the lodge that he was able to work, and whether by accident or design, it was not quite certain, both the N.G. and the secretary of the lodge had passed by the plaintiff's garden, and saw him with a watering-pot watering his garden; and upon this, notice was given to him that he must not do so, as it was considered a breach of the rule of the society. Shortly afterwards he was summoned to a meeting of the lodge, but he did not attend, and a resolution was passed that he be suspended for three months, and forfeit one week's sick pay. This seemed to have been taken up with interest by some people of the neighbourhood, and Mr. Haslam, the relieving officer, himself a member of the same society, had done himself infinite credit by the course he had taken; for although to a certain extent it was opposed to his own interest as such, he had determined to have the matter investigated, and had gone some miles to attend a lodge, had spent considerable time in going there, and also in attending the court to-day. He had told the lodge of the facts of the case, and had asked for a re-hearing, and therefore everything had been done on behalf of the plaintiff that possibly could have been, so as to have the matter put in a proper light. For the part Mr. Haslam had taken in the matter, his Honour said he could not speak of him too highly. It had been clearly shown that the plaintiff could not attend to the summons himself, on account of illness and decrepitude, and that it was equally beyond his means to employ anyone to represent him there. The lodge therefore met, and not only re-heard the case, but actually rescinded the former resolution, and passed another one expelling the plaintiff from the society altogether. Mr. Gee had disputed the authority of the County Court to entertain this matter, but he (his Honour) held that the rules had not been complied with. First, because there had been no special summons for their hearing in this case, and further that the lodge had no power to pass this strong resolution of dismissal; and secondly, when the first resolution was passed on the 24th of June, no legal notice had been given of it, and therefore it was informal, and the lodge could not at the second meeting pass a resolution annulling the previous one. The only ground alleged in justification of the defendants' conduct was that the plaintiff was

working, and thus breaking the rules; but he thought anyone who had heard the evidence would come to no other conclusion than that he had not the slightest power to work for a livelihood, and in the face of that the lodge expelled the poor man, and deprived him of the benefits of that fund to which he had been for years contributing. The object of these societies was that when men shall get old and decrepit they shall have assistance, but here this society had endeavoured to take advantage of a very trifling circumstance—nothing more than holding a water-can with a little water in it—and contended that he was labouring, and labouring within the meaning of the rules, and so entitled it to act as it had done. If this was the manner this much-vaunted Manchester society conducted its affairs and distributed its relief, he could only say that the members of it little knew what they were entering into. If members could be expelled on such slight grounds no man could know whether or not when the rainy day came he would be able to have the relief for which he had been contributing perhaps, as in this case, for many years. His Honour was glad to see that there were reporters for the press present, who would publish the case thoroughly before the world, and he had no doubt the public would come to the conclusion that this lodge had acted in a most unjustifiable and unwarrantable manner. His Honour then gave a verdict for the plaintiff for the full amount.

NORWICH ASSIZES. 1889. *July* 23 *and* 24. *Before* THE LORD CHIEF JUSTICE OF ENGLAND.

CASE 229.

STEWART *v.* ARMON.

Friendly Society—Slander in lodge room—Privilege—Withdrawal of imputations and settlement.

The plaintiffs, Thomas Stewart and George Henry Cooper, were trustees of the Star of the East Lodge, Lowestoft, and both occupied responsible positions in the town, the former having been for forty years manager to Messrs. Lucas, and the latter postmaster of Lowestoft for a considerable period. The defendant, Mr. John Armon, is a member of the lodge, and in the course of a discussion on March 28th, was alleged to have said "The lodge ought to keep a sharp eye on the trustees, as an officer in another lodge in the district had robbed the lodge of £300. If any common or ordinary member of the lodge had done what the trustees had done they would be locked up or transported." Mr. Kemp, Q.C., and Mr. Colam, appeared for the plaintiffs; and Mr. Vaughan Williams, Q.C., and Mr. S. Reeve, appeared for the defendant.

Mr. Kemp, in opening the case on July 23rd, said his clients did not require damages. They merely wished for a retractation of the slander, that their character might remain unblemished. Mr. Stewart had written to the defendant asking for an apology and a complete retractation, and stating that unless they were forthcoming legal proceedings would be instituted. Plaintiffs' solicitor also wrote to the same effect, but receiving no reply the action was brought. Mr. Williams pointed out that the words in the letters differed in most important particulars from those set out in the statement of claim. Defendant admitted saying that the plaintiffs had committed acts which, if done by poorer persons, would have led to their apprehension. The real grit of the

statement was the addition of words imputing that an indictable offence had been committed, viz., "or would have been punished by transportation." Neither of the letters suggested anything of the kind.

Mr. Stewart, who had been twenty-three years a churchwarden of his parish, said he had been twenty-one years a member of the Star of the East Lodge, of which Mr. Cooper, Mr. Swan, and himself were trustees. Mr. Williams, interposing, said he was making no imputation on this gentleman. Witness then narrated the following facts:—In July, 1888, a resolution was passed that the attention of the trustees be drawn to mortgages of property in Clemence-street, belonging to Mr. Martin, and they were to report thereon. On February 11th, the lodge resolved to realise the security, and the trustees met in the lodge-house to search in the safe for the deeds, but they could not find them. But there were deeds relating to property in the same street belonging to Mr. James Armon, and, believing they had some relation to Martin's property, the trustees withdrew them, Mr. Cooper at the same time leaving a memorandum of acknowledgment. Those deeds Cooper took to James Armon's house. Two or three days afterwards the trustees replaced the deeds, but left the memorandum in the safe. Subsequently witness found that Martin's deeds had been taken to Mr. Seago, solicitor, for the purpose of foreclosing the mortgage. On March 25th, at an ordinary lodge meeting, Mr. Swan and witness were asked to explain what had been done about the deeds, and witness said that thinking Armon's deeds bore some relation to Martin's property they had taken them for the purpose of realising the £250 advanced, on which nothing had been paid for two years. After that explanation James Armon said he was satisfied. Afterwards defendant, James Armon's brother, got up and made a long speech. He said, "It is necessary to look after the trustees. Some officer in an adjoining lodge had absorbed or wasted £300 belonging to the district, and the trustees must be looked after." Swan jumped up and said he was eighty years of age and had never been in a policeman's hands, adding "Lock me up now." Defendant replied, "We could transport you." Thereupon witness got up and said, "I shall tender my resignation." George Alcock asked defendant to withdraw what he had said and he refused. Mr. Swan then rose and resigned. Cooper was absent at a post-office dinner. Mr. Adamson was afterwards instructed to demand a retractation and an apology. The whole story was afterwards repeated in the public-houses and about the town. Mr. Williams said that defendant was not liable for the repetition of what was said. He was only liable for damages for the result. The Lord Chief Justice said that if a gentleman said such a thing as had been stated at a lodge meeting, it was sure to get about in a town like Lowestoft.

Mr. Stewart was cross-examined at great length, and his evidence was not shaken; but Mr. Williams denied that anything was said about transportation. It was an afterthought. The learned counsel contended that the trustees had acted irregularly in taking those deeds out of the box, and Mr. Armon under those circumstances had sent a very proper letter to the N.G.

On July 24th, Mr. Swan, aged 81, for fifty-five years a Trinity pilot, gave evidence, and said on hearing the words he resigned his position as trustee. Mr. Alcock, Mr. Robert Stewart (a son of one of the plaintiffs), and Mr. Tuck gave similar evidence. Mr. George Henry Cooper, postmaster, for

thirty-one years a member, and for seventeen years a trustee of the lodge, said Martin's deeds were taken by him out of the box by order of the lodge, and handed to Mr. Seago, solicitor. Some months later, after another resolution of the lodge, he again went with his co-trustees to the box to get Martin's deeds. Not finding Martin's deeds, he took out others which he thought related to the property, as they referred to property in the same street. Witness went to James Armon, and asked him if those deeds had any relation to Martin's property. James Armon said, "No, they are mine." Witness said, "Then I will take them to my office and lock them up and return them." Two days afterwards, witness, in the presence of Swan and Stewart, restored the deeds to the box, but did not take out the memorandum he had left there. Witness then went to Mr. Seago's office, where Martin's deeds were found in his safe. In cross-examination by Mr. Williams, Mr. Cooper said that after looking for Martin's deeds in the box, he went and asked Mr. Seago if he had them, for he had forgotten that he had taken them to Mr. Seago, who had also forgotten that he had them.

Thomas Bird also gave evidence, and Mr. Seago gave particulars of the deeds left with him; but said, in cross-examination, that Martin's deeds were never lost in his office, and he never told Stewart or Cooper that he could not find them. The Armons never admitted that they had said anything they considered offensive. P.G. Wm. Smith, of the Temple Lodge, gave evidence similar to that of the others, and this closed the plaintiffs' case.

Mr. Williams then addressed the court for the defendant, saying that he should call witnesses to prove that the offensive words complained of which had been deposed to by only two of plaintiffs' witnesses, not by all, were not uttered by defendant. His lordship remarked that one affirmative was worth many negatives. Mr. Williams said that Armon did not like his deeds being taken out of the box and kept by Mr. Cooper for a fortnight. He thought, with the majority of the lodge, that the taking of the deeds out of the box was irregular. There was no suggestion of ill-feeling on the part of Armon against the plaintiffs, and there was no evidence of express malice. His lordship: You would not contend that if it was truly said it did not pass the bounds of privilege. Mr. Williams: I would suggest that there are no bounds of privilege. He explained that defendant never replied to plaintiffs' letter because the rules of the lodge provided for arbitration concerning difficulties which arose among members, and secrecy as to what took place in the lodge was enjoined. It would be a bad day for these societies if the moment the conduct of the trustees was discussed at the lodge, and one member in the course of debate used expressions which in some places would be considered mild and harmless, he was to have an action for slander brought against him. Defendant might have got out of this matter very cheaply, but as he did not say what was alleged, he refused to do so as a matter of principle.

His lordship again intimated that he did not see why defendant could not have said that if he had given offence he was sorry, and further observed: What I have got to consider is this—Here is a matter clearly within the province of the lodge to discuss, brought forward by a person interested in discussing it, and he brings the matter. Mr. Kemp: Not so. They are James Armon's deeds, not George's. The Lord Chief Justice: James Armon brought the matter before the lodge to discuss.

It is discussed, and James Armon, the person really interested, says he is satisfied; whereupon George Armon, who is not interested except as a member of the lodge, gets up, and says he is "by no means satisfied. The trustees want looking after. The trustees in a neighbouring lodge had just robbed the lodge of £300; and if anybody in the room except these trustees—any common person—had done what these men had done, they would be locked up and transported;" whereupon one of them gets up, and says, "I never was in gaol in my life; lock me up." "I can transport you if I like." I am disposed to extend privileges as far as any man on the Bench, but I think the tremendous license of privilege is practically at an end. The Court of Appeal again and again have made decisions which, to my mind, destroy it. I cannot help thinking, if I understand some of the dicta of the Master of the Rolls, there is an end of it in every case. It is better to destroy it than to whittle it away by decisions. I must consider it from that point of view.

Defendant, a smith at Lowestoft, said that he never had any ill-feeling against plaintiffs, and had been a personal friend of Mr. Cooper. At the lodge meeting on the 25th March, a letter was read by the chairman, who called upon James Armon to make an explanation. He waited until Swan and Stewart came, and then asked about the deeds, Stewart did not seem to know much about them, but that Cooper had given his co-trustees a guarantee note to relieve them from responsibility, and defendant asked if he considered that note relieved him of all responsibility as a trustee. Stewart thought it did, and defendant said, "Brethren, I don't understand the business when the trustees cannot give an explanation when asked for it. It is a very irregular way of doing business when we ask questions and cannot get an answer. If that had been some poorer member like myself, what should we have been? We should have been locked up." He never used the words about being transported in the lodge in his life, and take his oath on it before God and man. He asked the Noble Grand what he was to withdraw, and the N.G. said there was nothing offensive to anyone in the lodge that he knew of, and therefore he had nothing before him to withdraw. Defendant never knew nor thought of robbery, so could not mention it.

In cross-examination by Mr. Kemp, defendant said he believed the trustees to be thoroughly trustworthy persons, and when he said "locked up" he did not mean in a police-court or prison, but brought before the lodge; though, when closely pressed, he could not give a clear idea of what he actually meant to convey by the words. When re-examined by Mr. Williams, defendant said Mr. Cooper had offered to withdraw from the case if he would make an apology and pay half of Mr. Cooper's costs.

Mr. James Armon was about to be put in the box, when his lordship suggested a way out of it on the basis of Mr. Cooper's offer made to defendant. Mr. Kemp said that if all accusations were frankly withdrawn, the plaintiffs would consent to a verdict of 40s. and half the costs, if the amount was paid within a month; if not, they must ask for the whole costs. Mr. Williams, for the defendant, accepted the verdict, and in the most ample manner withdrew any imputations which might appear to have been made on the character of the plaintiffs. All his client meant to suggest was that if a poor man had been found in the

possession of the deeds it would have gone hard with him. He never meant to insinuate anything further than irregularity in dealing with them.

His lordship gave judgment on the terms named, and wondered that the defendant was not advised earlier in the case, before the costs had become so large, to accept the fair offer of Mr. Cooper.

CASE 230.

COURT OF APPEAL.

1891. *Nov.* 23, 24, 25, *Dec.* 5.

JONES *v.* MERIONETHSHIRE PERMANENT BENEFIT BUILDING SOCIETY.

Contract — Validity — Public Policy — Stifling a Prosecution—Implied condition.

The secretary of a building society, who had made default in accounting for money paid to him and was threatened by the society with a prosecution for embezzlement, applied for assistance to the plaintiffs, who were his relatives, and they gave a written undertaking to the society to make good the greater part of the debt due from the secretary, the expressed consideration being the forbearance of the society to sue the secretary for the amount for which the plaintiffs made themselves responsible, and in pursuance of that undertaking they gave two promissory notes and some title deeds as collateral security to the society. The plaintiffs in giving the undertaking were actuated by the desire to prevent the prosecution, and that was known to the directors of the society; but no promise was made that there should be no prosecution.

The society brought an action on the promissory notes in the Queen's Bench Division, and the plaintiffs brought an action in the Chancery Division, to set aside the promissory notes and the collateral securities on the ground that they were made for an illegal consideration. The Queen's Bench action was transferred to the Chancery Division, and the two actions tried together.

Held (affirming the decision of Vaughan Williams, J.) that it was an implied term of the agreement that there should be no prosecution; that the agreement was therefore founded on an illegal consideration, and void; and that the society could not recover on the promissory notes or enforce the securities; and, the society not opposing, they were ordered to be given up to the plaintiffs.

CASE 231.

COURT OF APPEAL.
1891.
Dec. 1 *and* 5.
Before
LINDLEY,
BOWEN, & FRY,
L.J.J.

McCLATCHIE *v.* HASLAM.

Stifling a Prosecution—Agreement—Validity—Execution of Deed—Public Policy.

An action was brought by a married woman to set aside a mortgage of her property to the defendants, who were the trustees of a land society, to secure moneys which had been misappropriated by her husband, who was the secretary of the society, on the ground that the security was given under threats of a criminal prosecution against her husband.

Held that the burden was on the plaintiff to prove pressure or undue influence, neither of which had been substantiated; and that consequently her action could not be maintained.

The plaintiff's husband was the secretary and the defendants were the trustees of the Long Heaton Freehold Land Society.

The plaintiff's husband had misappropriated some of the funds of the society, and the plaintiff had executed a mortgage of her own property to the defendants to secure the amount which should be found due from the husband.

The plaintiff brought this action to set aside the mortgage, alleging that she had executed it solely in consequence of the threats of the defendant to institute criminal proceedings against her husband if she declined to execute the same, and in order to stifle and prevent such prosecution.

The defendants by their statement of defence denied that any threats had ever been made by them, or that the plaintiff had executed the mortgage otherwise than freely and voluntarily. They alleged that the plaintiff's husband being unable to pay over certain money which he had received as secretary of the land society, had offered the security in question which they had agreed to accept. The mortgage to which the husband was a party was dated the 16th day of May, 1888. It recited that the husband was indebted to the defendants in £250, and that the husband and wife had agreed to secure it. The husband and wife covenanted for repayment, and the wife assigned an annuity, a life policy, and certain other property of hers as security. The mortgage provided that the property should be a security for further sums which might be found due up to the amount of £800.

The action came on for trial before Kekewich, J., on the 8th day of June, 1890. The plaintiff, who was the only witness on her behalf, deposed that her husband had told her that he wanted her to go to the office of Mr. Elborne, a solicitor; that the defendant Haslam, one of the trustees of the society was there; that Haslam said that they wished her to sign a deed to save her husband from prosecution; that this was the first time she had heard of it; that Haslam said it was a pity she had to do it; that she went to the commissioner, who asked her if she did it voluntarily; that she said "yes," and that she had no communication with her husband.

The defendant Haslam deposed that in May, 1888, the sum in default was named as £250; that he never used the word "embezzlement" or "prosecution;" that McClatchie told him that he had not the money, but that his wife was willing to secure it, and that he had arranged with her; that he, Haslam, told the plaintiff nothing at Elborne's office; that he did not, in fact, know anything about the accounts; that McClatchie himself told the plaintiff that he was wrong with the society; and that the trustees never had any idea of instituting a prosecution against McClatchie.

Mr. Morley, the other defendant, deposed that he had never seen the plaintiff, and that there never was any suggestion of a prosecution. Elborne was the solicitor who prepared the mortgage, and he deposed that he was not the solicitor of the society, and did not know the circumstances which led to the security being given; that he had been instructed to prepare the mortgage for £250, and any other sums which might appear due; that he fully explained the deed to the plaintiff; that on the execution of the deed which had been prepared to cover further sums up to £400, the defendant Haslam said that that would not cover the liability, and that the sum was accordingly altered to £800.

It was decided by Kekewich, J. (63, L.T. Rep., N.S. 376), that, although there might have been no threat used towards the plaintiff, yet it must have been present to her mind that, unless something was done to prevent it, her husband would be, at any rate, liable to a criminal prosecution; that this information came either from the defendant Haslam, or from the plaintiff's husband as agent of the trustees; that this must have been the motive of the plaintiff in executing the deed; and that it must, therefore, be delivered up to be cancelled. From that decision the defendants now appealed.

Mr. Cozens Hardy, Q.C., and Mr. Dundas Gardiner for the appellants.

Mr. Haldane, Q.C., and Mr. J. G. Wood for the respondent.

December 5th, 1891.—The following judgments were delivered.

Lindley, L. J.: This is an action in the Chancery Division to set aside a security upon the ground that it was given under pressure; that is to say, threats of legal proceedings—criminal proceedings. The action is brought by a married woman. Her husband was the treasurer of the Long Heaton Freehold Land Society. His accounts were wrong. There was the sum of £250 due from him. He told the solicitor, Mr. Elborne, that his wife would give security. He told Mr. Haslam, one of the trustees, that his wife would give security for the total amount of his indebtedness. His wife, under the circumstances to which I will allude presently, executed, by way of security for her husband's debt, a charge upon some reversionary interest of hers in some money. That is the security which she now seeks to set aside. The undisputed facts of the case are, that certainly here there is no trace of any agreement not to prosecute, and the plaintiff has based her case in her pleadings—which were drawn by a very competent gentleman who knows what he is about—solely on pressure and undue influence. Now the security which she gave, and which she seeks to impeach, was very carefully explained to her by the legal gentleman who prepared it, a gentleman who appeared as a witness before Kekewich, J., and with whose conduct Kekewich, J. expressed himself thoroughly satisfied. There was not a word to be

said against him. He was not acting as a partisan in any way, and he did his duty as a solicitor of character ought to have done. Further than that by reason of the nature of the interest which she was charging, she appeared before the Commissioner, who took her assent to this document, and examined her and explained it to her apart from her husband. Those are undisputed facts. Under those circumstances, what is it necessary for the plaintiff to prove in order to obtain relief? She must prove her allegation that she was induced to give this security by undue influence and pressure. I thought at one time it was possible that she might try to shift the burden of proof by reason of the transaction being one in which a wife was making a sacrifice for her husband. But I do not think that that view is sound where a married lady has been separately examined, and has had the protection intended to guard against any such undue influence, and comes to impeach a document which she has executed under that protection. It appears to me that the burden is on her to make out her defence. Now, has she made it out? That depends upon the view that must be taken, of course, of the oral evidence. Kekewich, J., has decided the case in her favour; but he has not found as a fact that she executed this deed under pressure. We have, all of us, scanned his judgment with the utmost care, and we cannot come to the conclusion that he has decided in her favour upon that ground. He appears to us to have decided the case in her favour upon an erroneous view of the law as laid down in Williams *v.* Bayley (14, L. T. Rep., N.S. 802; L. Rep. 1 E and 1 App., 200). He says this: "I have not the slightest doubt on the evidence and facts before me that it was present to their minds"—that is the directors—"that he was in this great strait, and that unless something was done he would be at any rate liable to criminal prosecution." That is what he finds. We do not see any reason to differ from that finding. The learned judge goes on thus: "I have no doubt that that was the motive of Mrs. McClatchie, and that she did intend to get her husband out of that difficulty even at the sacrifice of her own property, and that the law does not allow." Now, the law does not go that length. I have explained, we have all explained in dealing with the case of Jones *v.* The Merionethshire Building Society that in order to invalidate a transaction of this kind you must prove one of two things; either an agreement not to prosecute, which we can dismiss from our minds here; or pressure and undue influence. It is not the law that, if a lady makes a sacrifice to get her husband out of a scrape, she can necessarily impeach the security which she gives, even although the result is "to stifle a prosecution." Now I come to the question of fact, and this depends upon a careful examination of the evidence. She tells one story, and Mr. Haslam tells a diametrically opposite story. Pressure by her husband is distinctly negatived by her. She will not allow that that had anything to do with it. Pressure did not come from that quarter at all events. If it came from any quarter, it was in a conversation which she alleges took place with Haslam just before they went to Elborne's office. Now, it appears to me that the burden of proof being upon her she has not satisfied it. I do not know the real truth about the undue pressure, but my own belief upon the evidence is that it was rather the other way—in other words, that she was not subjected to undue pressure. Under those circumstances I think that this appeal ought to be allowed and the action dismissed with costs. There will therefore be judgment for the defendants with costs here and below.

Bowen, L. J.: I have had the greatest difficulty in this case in making

up my mind as to what was the true view to be applied. The learned judge, as it appears to me, has decided the case, so far as I can feel at all confident, upon the view of the law which my learned brother has indicated. Kekewich, J., has pointed out that the true nature of the transaction is one that cannot stand in equity, if a wife gives a security to get her husband out of a difficulty when she knows the difficulty may result in the criminal prosecution of himself. In such a case that security never could be enforced against the wife. To my mind that is rather too strong a proposition to lay down as a rigid rule of law. I think that you must look at the pressure in each case as a question of fact. Although I do not doubt but that where the transaction is one which, when it is open to suspicion, ought to be examined with extreme care, still, one must come back to the particular circumstances of each case and see that the wife was a willing agent, knowing what she was doing and deliberately doing, and not influenced by threats made to her either directly by the society or by her husband. Now, the learned judge having taken that view did not apparently find it necessary as the *ratio decidendi* to his own mind to find specific facts. Without such finding one becomes rather embarrassed if one departs from the view of the law with which the learned judge began. That is where the difficulty in this case oppresses us. The two stories, the story told by the wife, and the story told by Haslam, the trustee, are diametrically opposite. The story told by the wife is, in substance, as follows: that she having been told nothing by her husband, was taken down to the solicitor's office, where she met Haslam, and where she was told by Haslam that her husband would be prosecuted if she did not give the security. If that story were true there was unquestionably pressure. But the learned judge has not found that he believed that story; on the contrary, he disbelieves it in one very material element. He says he does not think that the plaintiff has told the truth when she says she never heard of it from her husband before going down to the solicitor's office. That displaces a great part of the evidence upon which one would rest one's view of pressure. Supposing the wife had been taken down to the solicitor's office by her husband, and had been told nothing about it, and on the way had met Haslam, and had been informed by him that her husband would be prosecuted unless she gave the security, to my mind those circumstances, as I have stated, would prove pressure, I think that even if she had been taken down to that office without knowing beforehand what she was going to do, and she had met Haslam outside, and had had a conversation with him as the result of which she went in and executed the deed, the suddenness and the surprise of the transaction upon her would be a strong indication, to my mind, that this case fell within the category of cases where undue influence has been exercised, and where the court of equity will not allow the transaction to stand. Even if she had been brought as a reluctant victim to the office of the solicitor by her husband, and had been met outside by the solicitor, and had had a conversation which furthered the views of her husband, then I should think it a very great question whether pressure had not been exercised; but the difficulty was in seeing that she was a reluctant victim at all. If you disbelieve her evidence upon the point as to what passed between her husband and herself, whom can we trust in the case at all to establish that proposition on her behalf, that she was a reluctant victim, or that she had not full notice of what she was going to do, or that her account of the conversation with Haslam outside the solicitor's office, which is entirely denied by him, is to be taken as substantially correct? Kekewich, J., does not find that he believes her story. It is true only

to a certain extent. He impeaches the story told by Haslam, but he does not tell us how far he goes in impeaching it, and that being the way in which the case is left, one can only say that, in this instance, the burden being on the plaintiff to establish her case, she, to our mind, has failed to sustain the burden. Although I agree that the case is far from an easy one, she fails because she has not discharged herself of the necessity of proving her case.

Fry, L. J. : I have, like my learned brethren, scanned the judgment of the learned judge in the court below with all the attention I can give to it, our endeavour being to find out what the issue of fact is upon which he has come to a conclusion. I need not say that, where he saw the witnesses and heard the evidence and had come to the conclusion on the issue of fact, I should find the greatest difficulty in any way in differing from him. But I can only ascertain in this case that he has found two things. He has found that it was present to the minds of the directors that the husband was in a great strait, and that unless something was done he would at any rate be liable to a criminal prosecution. He does not find before that there was any intention to prosecute. Further, he comes back again that that was the motive. I suppose that means that the desire to avoid prosecution was the motive of Haslam, and that the plaintiff did intend to get her husband out of the difficulty by the sacrifice of her own property. That is the second point that he finds. Then he says the law will not really apply, now, I do not accept that as the law of England. I think it is quite possible that the directors may know that the man is liable to prosecution ; the wife may know the same, and if she, of her own will, makes a sacrifice for the purpose of protecting her husband, that is not pressure, and that is not a bargain. Then there is another passage, which I have also scanned very carefully like the rest of my brethren, in which the learned judge says that he believes, from the way in which the case was brought before the plaintiff, she was asked, and almost demanded, to execute the deed. Now, if that passage had referred to a demand made by Haslam, I should have concluded that the learned judge had found actual pressure and threats. But, unfortunately, the learned judge does not find it in that way, because he has come to the conclusion that the husband made the threats, and he has said that the husband was agent of the society to make those threats. I think there is no evidence of such agency. It must be borne in mind that the threats were threats which the wife entirely denies without any suggestion from her husband. Therefore I cannot attribute that finding to the action of Haslam. Now, even if the learned judge had told us that he believed the wife's story and disbelieved Haslam's story throughout, we should have had some firm ground to go upon. But he has not done so. He has said that he believes one particular statement of Haslam's is somewhat in excess of the actual facts, but he has found even more fault with the evidence of the wife. He has totally discredited it, and thrown it over on the most important part of the narrative. I find myself then reduced to the two findings of fact to which I have referred. They are not sufficient to maintain this judgment. Now, if departing from the judgment of the learned judge I apply my mind to the evidence as it stands upon the paper, all that I can say is, that I am in no way convinced that the plaintiff's case is right, independently of the finding of the judge who saw and heard the witnesses. I cannot say that I am convinced of the plaintiff's case. It consequently fails, and the action ought to have been dismissed from the beginning.

Appeal allowed.

CASE 232.

COURT OF COMMON PLEAS. 1843. *Nov.* 24.

WARD *v.* LLOYD.

Stifling a prosecution.

The court will not set aside a warrant of attorney given to secure a debt, on the ground that it was obtained from the defendant by a threat of prosecution for felony, unless it distinctly appear that there was an agreement by the plaintiff, either express or necessarily implied, to abstain from prosecuting upon the security being given.

CASE 233.

QUEEN'S BENCH DIVISION. 1885. *Feb.* 25.

HARPEN (APPELLANT) *v.* SYKES (RESPONDENT).

*Friendly Societies Act—Justices order to pay money—Limitation—Continuing offence—*3 & 4 *Wm. IV., cap.* 10, *sec.* 16.

The justices had made an order under 3 & 4 Wm. IV., c. 10, s. 16, on a member of a friendly society to pay money, he being a surety for a borrower. The money became due in 1880, when a demand was duly made, but the money was not paid. A fresh demand was made each year subsequently, and a summons having been obtained, the justices made an order on the latest demand. The defendant contended that the six months limitation in 11 & 12 Vic., c. 43, s. 11, applied, and was to be counted from the first demand, whereas the justices had treated the non-payment as a continuing cause of complaint.

Held the non-payment was not a continuing cause of complaint, but that it was complete on the first demand, and the proceeding was now too late.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 86.

CASE 234.

QUEEN'S BENCH DIVISION. 1888. *Jan.* 16.

WINDER (APPELLANT); THE GOVERNORS AND GUARDIANS OF THE KINGSTON-UPON-HULL CORPORATION FOR THE POOR (RESPONDENTS).

Trade Union—Right of Guardians to reimbursement by, as a benefit society—Enforcement of agreement with—Trade Unions Act, 1871 (34 & 35 *Vic., cap.* 31), *sec.* 4—*Divided Parishes Act,* 1876 (39 & 40 *Vic., cap.* 61), *sec.* 23.

A trade union is not a "benefit or friendly society" from which guardians of the poor can claim reimbursement under section 23 of the Divided Parishes Act, 1876, 39 & 40 Vic., c. 61, s. 23, in respect of the maintenance of a pauper.

N.B.—See Poor Law Amendment Act, 1879, 42 *Vic., cap.* 12.

CASE 235.

WORCESTERSHIRE QUARTER SESSIONS. 1884. *Jany.*

REGINA *v.* WILLIAMS.

Friendly Society—Fraudulently obtaining Travelling Relief—Conviction.

John Williams, 69, shoemaker, pleaded guilty to having, by false pretences, obtained on the 3rd November last, from the Pride of the Valley Lodge, Stourbridge District, of the Manchester Unity of Oddfellows, the sum of 1s.; also with having, by false pretences, obtained a sum of 2s. 4d. from the Stanley Baldwin Lodge of Oddfellows, Bewdley District, on the 5th, at Lower Mitton; and also by false pretences obtained 1s. from James Teague, on the 10th November, at Bewdley. He was sentenced to three months hard labour on each indictment.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *secs.* 84-90.

CASE 236.

QUEEN'S BENCH DIVISION. 1894. *May* 22. CAVE, J., AND WRIGHT, J.

REGINA *v.* THE JUSTICES OF STAFFORD. *EX PARTE* FOSTER.

Friendly Society—Treasurer ordered by Court of Summary Jurisdiction to pay over money—Disobedience to Order—Indictment—Summary Jurisdiction Act, 1879 (42 & 43 *Vic., cap.* 49, *sec.* 35)—*Practice.*

The trustee of a friendly society had, upon complaint to a court of summary jurisdiction, obtained an order against G., the treasurer, to pay the society £50 belonging to the society, which it was alleged he had in his hands, and had misappropriated. G. disobeyed the order, and an indictment was preferred against him at the Quarter Sessions, upon which a true bill was found for disobedience to the order of the court of summary jurisdiction. The justices assembled in Quarter Sessions held that they had no jurisdiction to try G. upon the indictment since section 35 of the Summary Jurisdiction Act, 1879, had provided a special statutory remedy which superseded the proceeding by indictment.

On April 17th an order *nisi* was obtained on the part of the prosecution for a *mandamus* calling upon the justices to show cause why they should not hear and determine the case against G. upon the ground that the offence for which he was indicted, and a true bill returned, was neither statutory nor created by statute, so that the prosecutors were not restricted to the procedure enacted by section 35 of the Summary Jurisdiction Act, 1879.

No cause was shown against this order being made absolute.

Mr. J. S. Pritchett, in support, was not called upon.

The court (Cave, J. and Wright, J.) held that the order for *mandamus* to the justices in Quarter Sessions to hear and determine must be made absolute.

Order absolute.

CASE 237.

COURT OF COMMON PLEAS.
1872.
June 8.
WILLES, J.
KEATING, J.

BARRETT (APPELLANT) *v.* MARKHAM (RESPONDENT).

Friendly Society—Treasurer withholding moneys of the Society—18 & 19 *Vic. cap.* 63, *sec.* 24.

To render the treasurer of a friendly society liable to the penalties imposed by section 24 of 18 & 19 Vic., c. 63, for "withholding or misapplying" moneys of the society which have come to his hands as treasurer, it must be shown that he has been guilty of some fraud or misrepresentation. Mere inability to pay over the money to the trustees is not enough.

Case stated by a police magistrate under 20 & 21 Vic., c. 43.

The appellant is one of the trustees of a friendly society called "The Prince of Wales Lodge, Order of Ancient Shepherds, Ashton Unity, South London District," and the respondent was until the 28th of October last, the treasurer of that society.

The parties appeared before the magistrate at the Lambeth Police Court upon a complaint preferred by the appellant, as such trustee, under the Act to consolidate and amend the law relating to friendly societies, 18 & 19 Vic., c. 63, s. 24, in which the respondent was charged "for that, being an officer of the said friendly society, he did, having in his possession certain moneys belonging to the said society to the amount of £31 2s. 11½d., unlawfully withhold and misapply the same." The following facts were proved :—

The respondent was duly appointed treasurer of the society, but had not been required to give the security directed by section 21 of the Act. The moneys, which he was charged with withholding and misapplying had been received by him in his character of treasurer for the use of the society. It was his duty to render quarterly an account of all moneys received and paid by him on account of the society, and to pay over to the trustees, on demand, the balance due from him on such account. The last account rendered by him was dated the 5th of August last; and it appeared therefrom that he was indebted to the society in the sum of £26 10s. 2½d. to that date, and from subsequent entries in the treasurer's book, further sums, making a total sum due by him to the society £31 2s. 11½d., the amount charged in the complaint. This sum he was unable to pay; and, as he could not give such security for the payment as was satisfactory to the trustees, these proceedings were taken. There was no charge of fraud or misrepresentation against the respondent in respect of these moneys.

The magistrate held that the inability and consequent refusal of the respondent to pay the balance was not a withholding or misapplying under section 24, and for the following reasons :—

That, although the words of section 24 of 18 & 19 Vic., c. 63, are sufficiently general to include the treasurer; yet, having regard to the provisions of sections 21, 22, and 23, it was not the intention of the statute that a treasurer should be dealt with under section 24, unless some fraudulent circumstances accompanied the act with which he is charged: and fraud is not imputed to the respondent.

That these sections 21, 22, and 23, appear to contain all that was thought necessary for the regulation of the office of treasurer, his duties and liabilities; and section 22 expressly directs the manner in which any balance found due from him to the society shall be recovered, as also the proceeding to be taken in the case of a treasurer who detains property belonging to the society, which in the case of any other person is provided for by section 24.

That a treasurer is not bound to account for any specific sum received by him; he may place it in his banker's hands or elsewhere, and may use such particular money as his own, without incurring any liability beyond indebtedness; but he is required to render an account of all moneys received and payments made by him, and the balance (if any) due by him on such account becomes a debt due by him to the society.

That this relation of debtor and creditor is shown by sections 21, 22, and 23; and that, upon the facts proved, a treasurer cannot be said to have withheld or misapplied moneys within the meaning of section 24, when he merely omits to pay them over to the trustees; that the words "withhold" and "misapply" in section 24, must apply to some specific moneys which the party holding has no right to use except for some particular purpose, and who misapplies by employing it, though without fraud, in his own business, and withholds it when he refuses to pay, though from inability, to those authorised to receive it.

That where a debt has been created, the refusal, not a refusal to account, for the account has been justly rendered, but to pay, and that from inability, is not a "withholding" within the section, nor the act whereby the inability arises a "misapplying."

That a contrary construction would encourage friendly societies to neglect those precautions which the Act has provided and required to protect their members against defalcations of their treasurers, while at the same time it would render a treasurer liable to be imprisoned for refusing to pay money which he honestly believed not to be due by him to the society.

The question for the opinion of the court was, whether the magistrate was right in dismissing the complaint.

Mr. Oppenheim for the appellant; Mr. John Thompson for the respondent.

Willes, J.: It appears to me that the statement in par. 3 of the case, that "there was no charge of fraud or misrepresentation against the respondent in respect of these moneys," makes an end of the matter. A civil remedy having been given against a defaulting officer by section 22, a proceeding of a criminal or penal nature is given by section 24 in respect of something which is of a criminal character. I do not say it is necessary that the matter complained of must, to bring it within section 24, be a thing for which an indictment would lie. I found my decision upon the language used in the beginning and at the end of section 24. If any officer, having any moneys, securities, etc., of the society in his possession "shall withhold or misapply the same." That clearly means a withholding or misapplying under circumstances importing misconduct. And this is confirmed by the proviso at the end of the section—"Provided that nothing herein contained shall prevent

the said society from proceeding by indictment against the said party; provided also, that no person shall be proceeded against by indictment, if a conviction shall have been previously obtained for the same offence under the provisions of this Act."

It is evident that the section intended to create an offence. Fraud and misrepresentation being negatived, I think the decision of the magistrate was right.

Keating, J., concurred.

Decision affirmed.

Mr. Thompson, for the respondent, applied for costs.

Willes, J.: The respondent is, we think, entitled to costs; but they must be set off against the debt due from him to the society.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 87, *sub-sec.* 3.

CASE 238.

STAFFORDSHIRE QUARTER SESSIONS. 1878. *October.*

THE QUEEN *v.* WINFER.

Friendly Society — Unregistered — Alleged theft by member—Acquitted.

James Winfer, labourer, was indicted for stealing money at Shareshill. Mr. Neville prosecuted. The money in question was stated to be the property of a benefit society at Shareshill, and the secretary, William Wood, produced the rules. The assistant-chairman pointed out that the society was not registered. It was for Mr. Neville to prove that the money was the property of a corporation, and this, in the absence of registration, would be impossible. Mr. Neville said he would proceed upon the fourth count of the indictment, which charged the prisoner with stealing money belonging to a partnership of which he was a member. The assistant-chairman said if this course were pursued it would be necessary to prove that the prisoner was a member of the partnership. The examination of the witness was then resumed. He said the money in the hands of the stewards was subscribed by the members generally. The prisoner was a member; the total number was 103. The assistant-chairman inquired whether the witness had any means of proving the constitution of the society so as to show the partnership. The witness replied that he had no books with him. The assistant-chairman said that when persons keeping unregistered societies came before the court they would be dealt with according to law. Persons should enquire before joining societies whether they were registered or not. Mr. Neville intimated that he could not proceed, and the assistant-chairman, in directing the jury to acquit the prisoner, pointed out that men joining these societies had no one to blame but themselves, for they did so with their eyes open, and with the full knowledge that they were without the pale of the law. The persons who managed them ought to know that they had no remedy, for the members might do almost as they liked unless the society was registered.

CASE 239.

CHANCERY DIVISION. 1893. Feb. 20. VAUGHAN WILLIAMS, J.

IN RE BIDWELL BROTHERS.

Company—Meeting of Shareholders—Resolution—Special Resolution—Proxies—Poll not Demanded—Mode of taking Votes—Voluntary Winding up—Companies Act, 1862 (25 & 26 *Vic., cap.* 89), *secs.* 51, 129; *Schedule I, Table A, Arts*, 42, 43, 48, 51. *(Revised Ed. Statutes, Vol.* XIV, *pp.* 214, 231, 255, 256).

At a meeting of shareholders of a company, the articles of which allow voting by proxy, although no poll is demanded, the chairman, in ascertaining the number of votes given, must count the vote of each person who has appointed a proxy, not according to the number of shares held by him, but as one vote.

CASE 240.

LEEDS BOROUGH POLICE COURT. 1886. *March* 21.

REGINA *v.* BLAND.

Friendly Societies Act, 1875 (38 & 39 *Vic., cap.* 60), *secs.* 32, 33—*Withholding Moneys belonging to Friendly Society—Conviction.*

At the Leeds Borough Police Court, on March 21st, 1886, before Mr. Bruce, Stipendiary Magistrate, William Bland (32), of Rose Cottage, Long Row, Horsforth, was charged under the Friendly Societies Act, 1875, with having unlawfully withheld £60 0s. 11d. belonging to the Duke of Clarence Lodge of the Leeds District of the Manchester Unity of Oddfellows, of which branch he was the secretary. Mr. Child appeared for the prosecution and Mr. James defended. Mr. Child said that Mr. James had had an interview with him upon the matter, and his friend suggested that an order should be applied for requiring the defendant to pay the whole of the money on or before the 30th of June with such an alternative as his worship might determine. He (Mr. Child) accepted the suggestion. He therefore asked his worship for an order upon the terms indicated, and asked that a nominal penalty should be inflicted. Mr. James said the defendant, who pleaded guilty, was doing his utmost to pay the money. Mr. Bruce said he should have thought it was the worst policy of friendly societies to treat cases like this as a matter of civil debt. He dare say those organizations were often placed in great difficulties by the withholding of money, but on the other hand, when they took a broad view of the case, what could be more disastrous to friendly societies generally, for a man of this kind, who had taken trust money which should have been devoted to the benefit of widows and orphans and to relieving sick and disabled persons, to act fraudulently by putting the money into his own pocket? It was a very sad thing, and he did not see how friendly societies, unless they took a much stronger course of action, could avoid being exposed to frauds of this kind over and over again. It would be well for some central authority to take up this subject. He did not say anything disrespectful of Mr. Child's clients: he did not know anything about

them. It might be that they were poor people and that the recovery of the money was of great importance to them. At the same time it was a disastrous thing that this sort of thing should be done. In the course of some conversation as to the penalty, Mr. James said he remembered a case in which his worship imposed a fine of 1s. It was a similar case to this, and the charge was only that of withholding money. Mr. Bruce: What does "withholding money" mean? Mr. James: There are words in the section providing for stronger cases. Mr. Bruce: What is the defendant? Mr. James: A railway clerk. Mr. Bruce: If this money had been withheld from a railway company there would have been a different state of things. Eventually his worship fined the defendant 20s. including costs, or in default, fourteen days' imprisonment, and ordered him to repay the £60 0s. 11d., or to be imprisoned for three months, the order to be suspended until the 30th of June.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic., cap.* 25, *sec.* 87, *sub-sec.* 3.

CASE 241.

BIRMINGHAM POLICE COURT. 1888. *July* 24.

REGINA *v.* JELF AND ANOTHER.

Friendly Society—Withholding moneys belonging to—Conviction.

Messrs. Jelf and Latham, late the solicitors to the Morning Star Lodge, Birmingham, were summoned before Mr. Kynnersley, the stipendiary magistrate, for withholding and misapplying £350, the property of the trustees. The case was first before the court on July 20th, and was adjourned until the above date. Mr. Jelf was present, but Mr. Latham was unable to come owing to serious illness, which was certified by Dr. Mann, and the case against that defendant was further adjourned for a month. Mr. Walford, who appeared for the lodge, said that were the case proceeded with in that way, an act of injustice might be done to his clients. Those proceedings had been entered upon as a kind of civil remedy, at once cheap and expeditious, instead of an action at law, to recover money improperly held from the society, and amongst the evidence which he should put in would be two letters written and signed in the name of the firm, which would make those proceedings an action for debt against the firm for money received. If the case was separated into two parts he might find himself in the position of having a decision against one of the partners, so that when he came forward with the second case he should be out of court.—Mr. Stubbins, who appeared on behalf of Mr. Jelf, said he was prepared to meet the case thoroughly with a complete answer to the charge. Of course he could see the difficulty in which his friend was placed, but he did not wish it to be understood that Jelf desired to take advantage of the absence of his partner. Yet he did not agree to any adjournment, but left the matter in the hands of the court.—Mr. Walford suggested that he should call some evidence, and then decide what should be done.—The stipendiary thought that any further adjournment of the case would be a calamity, and he therefore asked Mr. Walford to proceed with the case against Jelf.

Mr. Walford in stating the facts of the case said that in November last a Mrs. Smallwood disposed of some property upon which the Morning Star Lodge held a mortgage to the amount of £350. That money was handed over to Messrs. Jelf and Latham, and the trustees of the society attended at the office to sign the deed; but in consequence of the bank book being then in London for the purpose of interest being added, the trustees asked the lodge to allow Mr. Jelf to retain the money until they got the book from London. On being returned the book was handed to one of the trustees of the society, who took it to Jelf and Latham. He asked them to pay the money into the bank, and they did not do so. Thus matters went on until February in this year when at a meeting of the society, a minute was passed, requesting two of the trustees to call upon Jelf and Latham and ask that the money should be paid over. Those trustees called and had an interview, the result of which was that the matter was put off for a week. Other interviews between the trustees and Jelf and Latham took place, without any satisfactory results, and on April 6th, Jelf and Latham wrote to the society stating that they were realising some securities, and they would be able to pay the £350 within a month from that time. The month expired, but the money was not paid, nor were subsequent interviews any more successful.

Joseph Stubbs, one of the trustees, then gave evidence which bore out Mr. Walford's opening statement, and said that on May 30th himself and two other trustees called and saw Mr. Jelf, when he told them that if they came on the following day he would try to find the money. They called next day, and then Mr. Jelf offered them a third mortgage on a reversionary interest, which was worth £1,100. Mr. Jelf instructed one of his clerks to draw out a draft for the amount, but the first part of it was objected to, and in the end it was agreed that it was not worth the paper it was written upon. Mr. Jelf tore it up, and said he was very sorry the money was working men's money, and he should like to have something done for them. In cross-examination by Mr. Stubbins the witness said that the society allowed the matter to go on from February, and did not take any proceedings until the receiving order was made against the defendants. The society had not made any application to the official receiver prior to taking these proceedings—Charles C. Cooke, another trustee, corroborated.

Mr. Stubbins disputed that the money was paid to the defendant, but to a clerk who ought to be called.—Hannah C. Smallwood then deposed that the purchaser of the property mortgaged to the Morning Star Lodge put the purchase money on the table of Jelf and Latham's office, and that she took it up with the exception of the £350 which she left there.—Mr. Stubbins then submitted there was no case against the defendants, as at the time of the issue of the summons they were not in possession of the money. Under the receiving order, which was of a prior date, all the property of both defendants had passed over to the official receiver, and to him application should have been made for the money. The Friendly Societies Act, 1875, section 15, sub-section 7, stated that upon the death, or bankruptcy, or insolvency of any officer of the society having in his possession by virtue of his office any money or property belonging to the society, there is to be a prior charge granted upon the whole of the property in the hands of the trustee who is bound to pay over the whole of the sum to the society prior to paying any of the other creditors.—The magistrates' clerk asked Mr. Stubbins to

define the word "officer."—Mr. Stubbins said the word "officer" extended to any "trustee, possessor, secretary, or member of the committee of management of a society, or a person appointed by the society to sue or to be sued on its behalf." That, he contended, would include solicitor, and the defendants were acting as the society's solicitors. The very minutes proved that Jelf and Latham were so appointed.

Mr. Walford replied that there was no minute appointing Jelf and Latham, solicitors; and if there had been, solicitors did not come within the definition of the word officers. As to Jelf not being in possession of the money on the date of the summons, that was no defence. The offence was completed on each occasion when he was asked for the money and refused. After some legal argument, Mr. Walford pointed out that the section under which the proceedings were taken said that "any person" being in possession and withholding. He had proved the receiving and the withholding of the money.

The magistrate, in giving his decision, said: If the case had been proceeded with on indictment, I should have had no hesitation in the matter. As it is, I order a penalty of £10 and the repayment of the £350; in default, two months, without hard labour.

Leave to appeal on the point of law as to whether or not Jelf was an officer of the society was granted, and Mr. Stubbins then applied for bail, as the defendant had no goods upon which a distress could be levied. The stipendiary ordered the execution of the warrant to be stayed for seven days, and allowed bail, defendant in £50 and two sureties of £25. While an endeavour was being made to get sureties, Mr. Stubbins reminded the stipendiary that it was not the custom to require bail pending a notice of appeal. After some discussion, the order for bail was withdrawn, the execution of the warrant standing over until July 31st, when if no notice of appeal has been received, defendant will be arrested.

The appeal was subsequently abandoned, and Mr. Jelf surrendered to undergo his sentence. The case against Mr. Latham will be proceeded with as soon as he has sufficiently recovered.

On August 21st, the case of Mr. Latham, partner in the firm of Jelf and Latham, solicitors, who, it was understood, could not previously appear on account of ill-health, came before the Birmingham magistrates. Several friends who sympathised with the defendant's physical and financial sufferings had offered to discharge one-half of the sum which was withheld by the firm, and Mr. Bullar reminded the Bench that the proceedings were not criminal, but merely a summary way of recovering money withheld from a registered society. The Morning Star Lodge, to which Jelf and Latham had acted as solicitors, and whose money they had withheld, agreed under the circumstances to accept half of the total amount, and the summons was allowed to be withdrawn.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 87, *sub-sec.* 3.

CASE 242.

COURT OF QUEEN'S BENCH. 1861. *Feb.* 6.

SINDEN *v.* BANKES.

Dispute—Arbitration—Members or non-members.

The rules of a friendly society formed under Statute 10 Geo. IV., c. 56, provided that if any dispute should arise as to the legality or payment of any fine, money, or allowance, or as to the disqualification of any member at the time of his admission or between any officer and member it should be referred to the decision of the committee of the society from whom there should be an appeal to justices.

Before July, 1855, when Statute 18 & 19 Vic., c. 63, came into operation, defendant, the treasurer of this society received as such certain moneys, the balance of which he failed to pay over to plaintiffs, the society's trustees, and to recover which the plaintiffs after that date brought this action.

Held that whether the case was governed by Statute 10 Geo. IV., c. 56, or by Statute 18 & 19 Vic., c. 63, the action lay; for that the plaintiff's claim was not a dispute between the society and the defendant in his capacity as an individual member of it, which disputes alone were required by either statute to be dealt with under the society's rules and otherwise than by action.

Held by Hill, J., that Statute 18 & 19 Vic., c. 63, governed the case.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 68.

CASE 243.

1866. *July* 12. COURT OF SESSIONS (SCOTLAND). 1ST DIVISION. LORD ORMIDALE.

DUGALD BLUE *v.* JOHN POLLOCK AND OTHERS, TRUSTEES FOR THE WEST KILBRIDE FREE GARDENERS SOCIETY.

Reparation—Friendly Society—Liability of society's funds.

Held that the funds of a friendly society were liable in damages to a member for a wrong done to him through violation of the society's rules by its office-bearers.

The West Kilbride Free Gardeners Society was instituted in the year 1829, as a friendly society, for the purpose of raising a fund for the mutual benefit and support of its members during sickness or inability to pursue their respective employments; and, in the event of death, for the purpose of contributing towards the funeral expenses of its members. Dugald Blue became a member of the society at its institution. He paid his entrance money, and all the payments exigible from him, as a member, under the rules of the society. By the rules of the society, certified to be in conformity with law by the Registrar of Friendly

Societies in Scotland, it is provided (article 20) that the allowance to a sick member shall be 6s. each week, if bedfast, and 4s. each week if walking about. By article 18 it is provided that no member shall receive any benefit from the society until he has been full five years a member, and has paid up all arrears; and that "if any member bring trouble upon himself by irregular practices of any kind, he shall, upon the same being proved against him, be excluded from the benefit of the society during the continuance of such trouble; and if any person be found pursuing his ordinary employment, or tippling or intoxicated, or out of his house after 10 o'clock at night, while on the sick list, for any of these or similar offences he shall be suspended from all present benefits, until such time as the committee take his case into consideration, which they are bound to do within eight days." By article 26 it is provided that whatever may be the decision of the society, or their committee, it shall be final unless appealed against; and if any person consider himself aggrieved by the decision of the committee, he may refer it to the first quarterly meeting; and should any dispute still exist between the society, or any person acting under them, and any individual member thereof, the same shall be decided by arbitration, in terms of the 27th section of the Friendly Societies Act, 10 Geo. IV., c. 56, *videlicet*, the matter shall be referred to three arbiters, balloted from the list appointed for that purpose by the society, and whose names shall be entered in the society's books—to be balloted for in the following manner:—The whole of the names entered for that purpose shall be written down individually on small slips of paper, and put into a ballot-box, and the pursuer, in presence of the society or committee, shall draw three of these papers, and the persons whose names are thereon shall be considered arbiters, who shall finally decide the dispute. In all cases of arbitration each party to pay the half of the expense." A list of arbitrators was accordingly, some years ago, appointed by the society, whose names were duly entered in the society's books. By the Friendly Societies Act, 18 & 19 Vic., c. 63, s. 40, it is enacted that "every dispute between any member or members of any society established under this Act or any of the Acts hereby repealed, or any person claiming through or under a member or under the rules of such society, and the trustee, treasurer, or other officer, or the committee thereof, shall be decided in manner directed by the rules of the society, and the decision so made shall be binding and conclusive on all parties, without appeal." In the year 1861 Dugald Blue, who is now in the seventy-seventh year of his age, having become unable by reason of old age and bodily infirmity to pursue his employment, applied for and obtained admission to the benefits of the society. He was then placed upon the roll of "alimenters," with a weekly allowance of 4s., being the allowance under the rules to alimenters, if walking about. The weekly allowance of 4s. which had been granted to Blue in 1861 was stopped in June, 1864, when, as he was then informed, the committee expelled him from the society. The pretence upon which the pursuer was so expelled by the committee was that he had broken article 18 of the rules of the society, "it having been proven to the satisfaction of the committee that he was intoxicated on the 17th of June, 1864," three days before the date of his expulsion.

Blue thereupon raised this action against the president, treasurer, and clerk of the society, "and as such trustees for said society, and authorised to sue and be sued on behalf thereof," concluding for damages. He averred:—(Cond. 8.) "the pursuer is not aware of the evidence on

which the committee of the society proceeded in expelling him. It is not true that he was intoxicated on the day referred to. He was not cited to appear when the evidence against him was adduced, and he had no opportunity whatever of defending himself against the charge, or of adducing evidence, which he could easily have done, of its falsehood. In fact he had no intimation whatever that there was any charge against him until after his expulsion took place," (cond. 9) "The pursuer having heard of the resolution of the committee expelling him from the society, appealed in terms of the rules to the next quarterly meeting of the society, which was held on Friday the 15th July, 1864. This he did by means of a letter addressed to the then president, Mr. Robert Dunn, but nothing was done in the matter at that meeting, at least no resolution on the subject was communicated to the pursuer." (Cond. 10.) Having failed in obtaining redress by appeal to the quarterly meeting, the pursuer thereupon resorted to the next remedy provided for by the rules, and wrote to the president, requesting that the question betwixt him and the society as to the discontinuance of his allowance should be referred to arbiters. The president promised to lay the letter before the committee, and afterwards informed the pursuer verbally that his letter had been considered by the committee, and that they declined to accede to his proposal of an arbitration."

Lord President: The pursuer says that he, having been a member of this association, was erroneously expelled on an allegation of his having been intoxicated, and he says that that was not the fact; that he appealed against that decision by a letter addressed to the president; that the society did not deal with that letter, and that, by the rules of the society, he was entitled to have his case decided by a judgment of arbiters, and that that also was refused; and he complains that, having been in receipt of 4s. per week, he was all at once thrown destitute, and that redress was, contrary to the rules of the society, refused to him. The Lord Ordinary has sustained certain pleas stated in defence—the first and the fifth. That is all we have at present before us. His lordship's view is that the statements are irrelevant, that the pursuer does not state that the appeal was made in a proper manner, and, at all events, that the funds of the society cannot be made available for the payment of damages. In regard to the manner of appeal, I am not much moved by the objections that were taken to that part of the pursuer's case. The Lord Ordinary says that the action is directed against an act of the committee of the society, and not of the society itself. I do not see that. As I gather from the rules of the society, the committee had power to pronounce the decision they did pronounce, if there were grounds for it, and there was no appeal from this decision. Accordingly, the defenders themselves do not take this ground on the record. In their second plea in law they speak of what was done as "the decision of the society," and in the same way throughout the record. Then again, it is said Dugald Blue did not take the right course in order to obtain review of the decision. I was very anxious in the course of the debate to know from the defenders what was the right course, but I could get no answer on the subject except that this was not the right course, and that there is no course prescribed in the rules. I do not know, in reference to an institution of this kind, the laws of which prescribe no special form of appeal, any better plan than that which was adopted of addressing the president, and the same remark applies to the offer to refer to arbitration. When it was made, it was not treated as irregularly done, but as if the pursuer was not entitled to

make it. But there is a broader question raised in this case, and one of far more importance, which indeed is at the foundation of the Lord Ordinary's judgment, namely, whether a demand for damages, or rather for reparation of the wrong complained of, is competent against the society, or whether it should be directed against the individual wrong-doers, and the cases of Findlater *v.* Duncan and Ross *v.* Heriot's Hospital were referred to. Now, in the first place, this society itself states the thing done as having been done by itself. The defenders so represent it in their pleadings as done by themselves, and not by their office bearers acting beyond their powers. But, further, I think the nature of this case, and the character of this institution, take them out of the rule of Findlater *v.* Duncan. In that case, the matter did not undergo much discussion in the court here. I was counsel for the trustees, and endeavoured to be heard on the point, but I did not get much encouragement. In the House of Lords, however, the question did undergo some discussion, and was made the ground of judgment. But what is the nature of this institution? It is formed for the purpose of managing funds which are contributed by its members for the benefit of the members, and the result of expelling this man was to enrich themselves, and to put into the coffers of the society what ought to be in the pursuer's pocket. It is, therefore, in a totally different position from the case of Heriot's Hospital. This case is, in short, the case of a company managing its own affairs and the pursuer is a member of that company, and demands his rights. In Heriot's Hospital case, the money was a gift to be applied for certain purposes. Here the fund is of a different character altogether. I am, therefore, of opinion that the judgment of the Lord Ordinary cannot be sustained.

The claim, though called a claim of damages, is one of reparation, now, suppose the pursuer to be right, reinstatement, which the defenders say is all he is entitled to, is not sufficient, if he has been improperly deprived of his 4s. per week since the date of his expulsion. I think the claim he has made in this summons is a competent demand.

Lord Curriehill: I am of the same opinion, and I may state that, having examined carefully the rules of this society, I am satisfied that its funds are in a totally different position from those of the Road Trustees in Findlater *v.* Duncan and those of Heriot's Hospital. I am clear that this society may incur liability either *ex contractu* or for reparation.

Lord Deas: The Lord Ordinary bases his interlocutor mainly on the cases of Findlater *v.* Duncan and Ross *v.* Heriot's Hospital, as preventing this action from lying against the funds of the society. I am very clear, with your lordships, that so to apply these cases is a misapplication of the doctrine they contain. This is a society—in other words a company—constituted for mutual benefit, which, through the medium of its committee, refused and repudiated a claim for a specific amount of aliment made on its funds. The members of committee, in what they did, were acting within their powers, and protecting the funds from the claim made on them, and it would be very extraordinary to hold that the funds of the society are not liable to meet that claim, if it is well founded, either as a direct claim for the aliment withheld, or, what is substantially the same thing, in the shape of damages, the amount of which may be measured by the amount of aliment so withheld.

Lord Ardmillan: Whether Dugald Blue was rightly or wrongly expelled is not the question now before us; he was in either case entitled, under the rules, to the arbitration which he demanded. And I have no doubt that where such a wrong as is here complained of is done by a society, consisting of contributors, in the administration of funds which the members contribute, the funds of the society must be answerable.

This interlocutor was pronounced—"Recall the interlocutor of the Lord Ordinary reclaimed against: Repel the first and fifth pleas in law for the defenders, and decern: Find the respondents liable to the said Robert Blue in expenses incurred by himself and by the late Dugald Blue since the date of closing the record: Allow an account, therefore, to be given in, and remit to the auditor to tax the same, and to report and supersede consideration of the cause, *quoad ultra*, in the meantime."

Robert Blue was insisted in room of Dugald Blue, who died in the course of the action.

SPITTLEGATE (GRANTHAM) QUARTER SESSIONS. 1884. *Jan.* 4.

CASE 244.

REGINA *v.* WATSON.

Friendly Society—Unlawfully Withholding Moneys belonging to—Conviction.

Daniel Watson was brought up on a warrant, charged under the Friendly Societies Act, for that he, being the secretary of the Free Briton Lodge of Oddfellows, M.U., did unlawfully withhold certain moneys, amounting to £6 14s. 10d., between March, 1878, and January, 1883, contrary to the rules of the Order.—In reply to a question by the clerk, defendant stated that he had appropriated the money, but with the intention of refunding it; he had, however, since found himself in financial difficulties, and was unable to do so.—Mr. Heath (of the firm Heath, Sons, and Butterfield) appeared to prosecute, and said he was instructed not to press for a penalty or conviction, if defendant would undertake to pay the money he had appropriated, and the expenses of the case. He was a married man and had a large family, and they thought he had had financial difficulties. Mr. Heath then briefly stated the circumstances of the case. Defendant was the secretary of the Denton Lodge, and was empowered to receive the payments of members who resided at a distance. In October, a man named Geeson, a member of the club, residing in London, who had made his payments through the Belgrave Lodge, applied for sick pay. It was then, and then only, that the deficiencies were discovered. The present secretary of the lodge (Mr. Welbourne) said the defendant had been secretary of the Free Briton Lodge of Oddfellows for twenty-one years. He gave up the books in December last to witness (who was elected secretary in his place). They then found that defendant had not entered the money received from the different lodges under different heads, but under the head "From other lodges." When they came to specify the amounts, it was discovered that the sum entered was deficient. The cost of

witnesses, etc., amounted, together with the £6 14s. 10d. claimed, to £12. The nominal fine of 2s. 6d., was imposed, and the money was ordered to be paid within a month, or in default two months' imprisonment.

N.B.—See Friendly Societies Act, 1896, 59 & 60 *Vic.*, *cap.* 25, *sec.* 87, *sub-sec.* 3.

CASE 245.

1879.
Feb. 13.
Award of
CHIEF REGISTRAR.

CAUNDLE *v.* BINGHAM.

Friendly Society—New Rules and Existing Contracts—Claims for Sick Pay.

A member of a friendly society, on the 1st July, 1878, being wholly disabled, was receiving, and had been receiving since 30th July, 1865, in accordance with the then existing rules of the society, the full sick pay of 10s. 6d. per week, returning one day's sick pay in every week in lieu of contributions, and was entitled under the rules to receive the same amount of sick pay on the same terms so long as his sickness should last. On the 1st July, 1878, new rules were registered, by one of which a member was entitled to sick pay for 12 months only, being reduced to half-pay for the remainder of his sickness; and by another rule the contributions of every member must be kept up whether he was receiving sick pay or not. The member claimed that he was entitled to the benefit of the former rules; the society, that he was subject to the new rules.

The Chief Registrar considered that the case was ruled by an opinion given by Lord Selborne when Attorney-General, on the 11th June, 1864, printed with the case in Mr. Tidd Pratt's Report of that year, pp. 27-8, and awarded that, notwithstanding the registry of the new rules, the member continued entitled to any relief or benefit from the funds of the society of which he was in the actual receipt, or entitled to the actual receipt, on the 1st July, 1878, under the previously registered rules; and that he continued to be entitled to such relief under the same conditions as under the previously registered rules.

N.B.—See ante pages 46 *and* 195.

CASE 246.

1881.
April 11.
Award of
CHIEF REGISTRAR.

DAVIS *v.* BIRD.

Friendly Society—New Rules and Existing Contracts—Claim for Sick Pay.

The 21st rule of a lodge of Oddfellows provided that the sick gift should be 10s. per week for 16 weeks, and 7s. per week for 16 weeks, then 5s. per week during the remainder of the member's sickness. A member, who became ultimately blind, received in succession the 10s. per week, the 7s., and the 5s. Whilst he was in receipt of the 5s. a

meeting was called to consider an alteration of rules, at which he was present, not however voting or otherwise taking part in the proceedings. The alteration, a complete one, was duly registered, and by the new rule, 20, the allowance of the third period was reduced to 3s., instead of 5s., for the remainder of a member's sickness. The society offered, and the blind member refused the 3s. per week, and he summoned the secretary of the society before the stipendiary magistrate for the payment of 40s., being eight weeks' sick pay at 5s., due 3rd January, 1881. The matter having been, at the suggestion of the magistrate, referred by consent to the Chief Registrar, it was contended on behalf of the society that blindness was not sickness within the meaning of the rules; that the plaintiff joined the society with knowledge that the rules might be altered; that it was his duty to object to the registration of the new rules if he did not wish to be bound by them; and it was sought to distinguish the case from the one advised upon by Lord Selborne when Attorney General in 1864 (see Mr. Tidd Pratt's Report of that year, pp. 27-8), on the ground that this was a complete amendment, and that therefore there were no existing rules under which he could claim except such amendment.

Held that the case was not distinguishable from the one advised on by Lord Selborne or from Caundle *v.* Bingham, *ante*, and award that plaintiff was entitled to the 40s. sick pay.

N.B.—See ante pages 46 *and* 195.

CASE 247.

1883.
Dec. 17.
Award of CHIEF REGISTRAR.

PRINCE OF WALES LODGE, I.O.O.F., KINGSTON UNITY *v.* OFFICERS OF SHIELDS DISTRICT, I.O.O.F., KINGSTON UNITY.

Friendly Society—New Rules and Existing Contracts—Claim for Sick Pay.

Claim on behalf of a member of a branch lodge of an Order, who had been in receipt of sick pay from his district at the date of registry of a complete amendment of the rules of the district in pursuance of which his sick pay was stopped. It was admitted that he had not been a consenting party to nor had assented to the amendment.

Held that the case was governed by Lord Selborne's opinion of 11th June, 1864, followed in Caundle *v.* Bingham, R.C.R. (1879), p. 17.—Award that notwithstanding registry on 25th January, 1883, of complete amendment of district rules, the member not having been a consenting party to nor having assented to such amendment, was, and continued entitled to any relief or benefit from the funds of the district of which he was in the actual receipt on the 25th January, 1883, under the previously registered rules.—The expenses of the award were directed to be paid out of the funds of the district.

This case was remarkable as having been referred to the Chief Registrar, not only as the Act requires by consent of the parties, but with the full assent of the Order itself through the secretary of which the papers were received, and which it is understood will accept it as settling the practice in similar instances.

N.B.—See ante pages 46 *and* 195.

CASE 248.

1894.
July 26.
Award of
CHIEF REGISTRAR.

FORTUNE *v.* ORR.

Friendly Society—Dissolution of—Claim by widow of member for funeral money after instrument of dissolution executed.

William Fortune and the 15 other members of the Clarence Friendly Society all executed an instrument of dissolution bearing date the 23rd April, 1894. It was sent for registry on the 17th May and registered on 26th May. The advertisement appeared in the "London Gazette" of 1st June. William Fortune died on the 27th May. By the instrument of dissolution the contributions paid in the present year amounting to £14 5s. 11d. were to be refunded, and the balance £7 12s. 2d. apportioned according to seniority of membership. William Fortune had been a member for upwards of 20 years. By the rules £12 was payable on the death of a member, and Margaret Fortune, the widow of the deceased, claimed that sum.

Held that the instrument of dissolution was binding on her as claiming through William Fortune, and award accordingly. Expenses to be paid by claimant.

CASE 249.

CHANCERY DIVISION.
1896.
Aug. 4, 5.
KEKEWICH, J.

IN RE BUCK.

BRUTY *v.* MACKEY.

Friendly Society — Poverty — Charity — Failure of objects—Charitable Legacy—Lapse—Cy-près.

In 1880 a friendly society was established to provide, by subscriptions, contributions, and fines, an "invested fund" for the relief, by means of annuities, of members, their widows and children, if in distressed circumstances.

By the will of a testator, who died in 1893, a legacy of £500 was bequeathed to the society for the purposes thereof. At that time there were only three annuitants living, being widows of deceased members, and there was only one member remaining, who was also sole surviving trustee of the "invested fund," which was amply sufficient to provide for the three annuities. Subsequently two of the three annuitants died.

On an originating summons by the executors of the will against the sole surviving member, the sole surviving annuitant, and the residuary legatees to ascertain whether the society was entitled to the legacy:

Held (1) That the society was a "charity" within Commissioners for Special Purposes of the Income Tax *v.* Pemsel ([1891] A.C. 531); (2) that it was a charity existing at the testator's death, and therefore the legacy had not lapsed; and (3) that the legacy, not being required for the remaining annuity, was applicable *cy-près*.

Cunnack *v.* Edwards (*ante* p. 159) distinguished.

Thomas Buck, by his will, dated 28th June, 1884, bequeathed, among charitable legacies to various institutions, "To the Commercial Travellers' Society . . . the sum of £500 . . . . for the purposes of such institutions respectively:" and he directed that the said charitable legacies should be paid free of legacy duty, and that they and the duty thereon should be paid out of his pure personal estate; and he declared that the receipt of the treasurer for the time being of the said institutions respectively should be an effectual discharge for the said charitable legacies respectively. And his residuary estate he gave to trustees upon trust for sale, and to hold the net proceeds thereof in trust for all such of his children as should be living at his death in equal shares, the share of each child being settled in manner therein mentioned.

The testator died on January 8th, 1893. His executors paid all his debts and legacies except the above-mentioned legacy of £500, which they retained under the following circumstances: In January, 1800, "The Commercial Travellers' Society" was established as a Friendly Society in the City of London. The rules of the society, as afterwards, in 1832, certified by the Registrar of Friendly Societies stated (the rules of the society were then read).

An "invested fund" was duly provided, and the income thereof was from time to time applied in payment of annuities granted in accordance with the rules to persons entitled to relief; but eventually, in consequence of the falling off in donations and subscriptions, the income of the fund ceased to be sufficient, and the deficiency was made up from time to time out of the capital.

In July, 1888, the then three trustees of the society paid into court, under the Trustee Relief Act, to the credit of the society a sum of about £5,000, being the amount of the then "invested fund" of the society. The grounds for payment in were that in consequence of the advanced age of the then remaining annuitants, six in number, the fund would probably soon be more than sufficient to pay the annuities out of the income, and that the same and the surplus income could only be dealt with under the directions of the court; that since January, 1871, no general meeting of the members of the society had been held; that previously to that date meetings had been summoned by advertisement, but no one had attended except the committee; that the members of the committee had gradually become reduced to two, who were both men of advanced age; and that as it had become practically impossible to hold meetings of the members, the society could not be dissolved under the Friendly Societies Act, 1875, and even if it could be dissolved, the persons entitled to the trust fund could not be ascertained.

On February 19th, 1889, an order was made, on petition, for payment to the six remaining annuitants of their several annuities out of the income of the fund in court, and also out of the capital in case the income should prove insufficient.

At the death of the testator, Thomas Buck, in 1893, three of these annuitants were still living; and of the three trustees who were living in 1888, and who were at that time believed to be the sole surviving members of the society, one only was living at the testator's death, namely, John Brunt Mackey. Of the other two trustees, one had died in 1891, and the other—George Chater—had died on October 30th, 1892.

In May, 1896, only one of the six annuitants remained—Harriet Lucy Cage—who was in receipt of an annuity of £32 as the widow of a former member of the society: and, as far as was then known, the only remaining member of the society was the said John Brunt Mackey, who was also the sole surviving trustee and member of the committee. The "invested fund" now standing in court to the credit of the society was represented by a sum of £4,836 9s. 8d. India 3 per Cent. Stock and a sum of £320 13s. 11d. cash.

On May 18th, 1896, an originating summons was taken out by the trustees and executors of the will of Thomas Buck against J. B. Mackey, the sole surviving trustee, and supposed sole surviving member of the society; Mrs. Cage, the sole surviving annuitant; Thomas William Buck, a son of the testator, and one of his residuary legatees; and the Attorney-General for the determination of the following questions:—(1) Whether the institution called "The Commercial Travellers' Society" was so existing at the date of the testator's death as to have become entitled to the legacy of £500, or was not so existing; (2) whether, if the institution was so existing, the legacy ought to be paid into court, or how otherwise it ought to be dealt with; and (3) whether, if the institution was not so existing, the legacy ought to be treated as lapsed and fallen into the testator's residuary estate, or to be applied *cy-près* for charitable purposes.

Mr. D. G. Begg for the plaintiffs.

Mr. Sheldon for the defendants, J. B. Mackey and H. L. Cage.

Mr. Renshaw, Q.C., and Mr. A. M. Begg for the defendant, T. W. Buck, as representing the residuary legatees.

Mr. Ingle Joyce for the Attorney General.

Kekewich, J., in giving judgment, said: There are two questions falling for decision wholly independent of each other. The first question is whether "The Commercial Travellers' Society, whose office is at 17, Philpot Lane, City," to which society, through the treasurer for the purposes of the society, the testator gives £500, is a "charity" within the ordinary doctrine of the court as expounded by the House of Lords in the Commissioners for Special Purposes of the Income Tax *v.* Pemsel (1891) A.C. 531. Until we have decided that question we cannot make any progress with the other. If I were uncontrolled by decision my opinion would be in favour of this being a charity. Now, am I controlled by decision? It seems not. Cunnack *v.* Edwards and the other cases which have been cited all dwell on the absence of the ingredient of poverty in persons who are entitled to the benefit of

the particular institution. Lord Halsbury, in giving judgment in Cunnack *v.* Edwards, speaks of the society he then had to consider as a "perfectly businesslike arrangement," and the society in the present case has been described argumentatively as "a mutual insurance society." If this is a case of a "perfectly businesslike arrangement," if it is "a mutual insurance society," then it seems to me that not only am I bound by authority, but it is a case that would clearly, reasonably, and fairly fall outside the definition of "charity." It has been pointed out that this society has been maintained and has reached its present position, which is one at least of perfect solvency, not merely by the subscriptions of members (whether life members or annual members), whose subscriptions would be a certain fixed sum, but by voluntary subscriptions or donations—donations either by living persons or by will. That is a matter not to be forgotten, but it is by no means to my mind conclusive upon the question whether it is a charity. It is obvious, I think, on the face of these rules that this is not a society formed and maintained on actuarial principles. That this is true of a very large number of societies either charitable or in the nature of mutual insurance societies. We are all acquainted with some most excellent institutions of that character which could not have been maintained and kept solvent but for large donations. It is those donations which enable such societies to start and be maintained. Certainly this society was not founded on actuarial principles. It depended upon adventitious aid, such as donations by those who did not themselves desire to have any benefit from the society. That is why it really is not of so much importance that there were donations at all. Donations are for a different purpose. They are to raise the level of the benefits which ought, in "a perfectly businesslike arrangement," to borrow the words of Lord Halsbury, to be arrived at by actuarial calculations. Then, this fund having been obtained, it is to be applied in payment of certain annuities, annuities of £20 to widows and £5 to children. The children are to have an annuity of £10 each when they are motherless as well as fatherless. I do not see any provision that the annuity in either case is to vary with the funds of the society. There is no calculation, as far as I can see, that the funds would provide the several annuities from time to time. For that, no doubt, the society depended very much on their outside subscriptions. So that is not a mutual insurance society. It is not, as it seems to me, "a perfectly businesslike arrangement," although it may be partly business aud partly charitable; but what I find is this, that as regards both widows and children, the intended provision is strictly for those who are in what is called "distressed circumstances." That is clear from the language of rule 14. The words "distressed circumstances," although capable of many interpretations, grammatically, no doubt, mean not only that a member is so sick that he cannot follow his ordinary employment, but that his position in life is such that he cannot live independently of that employment—that he is distressed in that sense. I do not think there can be any doubt that that is the meaning of the words.

Then as regards "infirmity," that means some permanent disease, accident, or anything of that kind, rendering the member an object deserving of the assistance of the society. It is only reasonable to conclude that the committee would not be doing their duty in considering a man an object deserving the assistance of the society if, however painful his physical state might be, he had ample means. I understand then that the rule points distinctly to poverty. The same is true as

regards rule 15, under which the widow of a member is, as a condition of relief, to be in distressed circumstances, and so with regard to the children, who are also to be left in distressed circumstances. Here, therefore, I have that very element of poverty which Hall, V.C., thought was absent in the case before him of In *Re* Clarke's Trust; and it was pointed out in Commissioners for Special Purposes of the Income Tax *v.* Pemsel that although the decisions have gone far away from poverty as being the strict limit of charity, at the same time poverty is in itself an object of charity; and when you find poverty referred to in the provisions of such a society as this, it is impossible to say that this society is merely "a business-like arrangement" or "a mutual insurance society." Therefore, I am not precluded by the authorities from saying that this society is a charity, which I hold it to be.

Then, if this is a charity, there comes the question—Is there a lapse of the legacy of £500? Assuming that the money is given to a charity that has ceased to exist at the date of the death—which seems to be the critical point—then, if the legacy has lapsed, the law of lapse applies at any rate to this extent, that the testator fails to specify the legatee; and, therefore, because there is no legatee which can be specified—because there is a non-existent body, just as there might be a non-existent person—the money must fall into residue. But it is agreed on all hands, not only that at the death of the testator, but that up to the present time there was and is at least one annuitant claiming against the fund. So that the charity is alive to that extent, and must remain alive as long at least as that annuitant survives. I cannot, therefore, see how it can possibly be said that this society is dead, though it may still be, what Mr. Renshaw said it was, "moribund." The difference between "moribund" and "dead" is considerable. Test the case in this way. Supposing that this annuitant were not paid, she being entitled according to the rules of the society to be paid, could she not assert her rights? If she could assert her rights, she could assert them against the fund and against the administrators of the fund which is in court. It seems to me there is a duty to provide for her annuity which is still existing, and consequently the charitable institution is still existing. It does not follow, however, that because it is still existing it has not failed practically. It seems to me that the institution has failed, except so far as it is necessary to provide for this particular annuitant. That is a matter of consideration as regards the fund in court, with which I am not now dealing. But as regards this legacy of £500, it is clearly not wanted for the particular annuity, and it must be applied, that is to say, put in process of application, to objects akin to those to which the testator devoted his legacy, but to which it cannot be strictly applied because there are no means of so applying it.

There must be a declaration that the society is a charitable institution and was existing at the testator's death, and that there was no lapse of the legacy of £500; and there must be an order for payment of the money into court to the same credit as the other funds of the society, but to a separate account. The costs of all parties, as between solicitor and client, will come out of the legacy; and there will be liberty to the Attorney-General to apply for a scheme.

HIGH COURT OF JUSTICE. QUEEN'S BENCH DIVISION. DENMAN AND MATHEW, J.J. 1896. *Dec.* 21.

CASE 250.

NELSON *v.* THE ROYAL LONDON FRIENDLY SOCIETY.

Friendly Society—Benefit—Payment of to Widow valid in absence of other legal claimant.

This was an appeal from the decision of his Honour the Judge sitting in the County Court at Rotherham, that sub-section 5 of section 15 of the Friendly Societies Act, 1875, indemnified the society on payment of the sum assured to the widow of the deceased member, in the absence of a claim thereto by his executors.

Mr. Broxholme was counsel for the executors, and Mr. Bray was for the society.

Mr. Broxholme: This is an appeal.

Mr. Justice Denman: We do not encourage you to embark upon a long argument, but, if the question really is only what is the construction of a particular clause and you both agree that that is the question, you may tell us the clause and ask our opinion about it.

Mr. Broxholme: It is not only that, but what I say is that the learned judge of the County Court himself misunderstood the facts of the case and decided that, on the facts as he imagined, the case came under a particular section of the Act. I shall be able to show your lordships in a very short time what our contention is in the matter. I appear on behalf of the plaintiffs. They appeal from the County Court Judge's decision at Rotherham. He gave a decision against us on the ground that the defendant society, which is a registered society under the Friendly Societies Act, was protected by sub-section 5 of section 15 of the Friendly Societies Act of 1875. This was an action brought to recover the sum of £11 5s. under the following circumstances. One John Utley had been a member of the friendly society for years and had paid his subscriptions, and his legal representatives became, on his death, entitled to the sum of £11 5s. under a policy which I am not able to produce now, because the policy was handed over, as I shall show your lordships, to the friendly society and it has been destroyed since; but at any rate his legal representatives became entitled to this amount.

Mr. Bray: I beg your pardon.

Mr. Broxholme: I have a copy of the policy here which is exactly the same as the original.

Mr. Justice Mathew: As I gather, the company were entitled under their rule to pay the widow, or children, or the legal personal representative, and their case was that they paid the widow.

Mr. Broxholme: Yes.

Mr. Justice Mathew: The action was brought by the legal personal representative.

Mr. Broxholme: An action has been brought by the legal personal representative.

Mr. Justice Mathew: You wanted to make the society pay twice over?

Mr. Broxholme: Yes.

Mr. Bray: Three years after.

Mr. Broxholme: We say they had no right to pay the widow this amount.

Mr. Justice Mathew: Why do you say this rule does not apply?

Mr. Broxholme: For this reason. I may tell your lordship that the action is brought by executors under a will. In this particular case your lordship will see that the sections in question do not apply. In the first place, sub-section 3 applies to the case of nomination by a member of the society, the next one, sub-section 4 applies to intestacy; and sub-section 5, the one under which the learned judge decided, deals only with this case—whenever the society after the decease of any member pays any sum of money to a person who at the time appears to the trustees to be entitled under this section, then the payment is valid. Now under this section there are two eventualities—the one is non-nomination and the other is intestacy. In this particular case there was neither one nor the other.

Mr. Justice Mathew: Do you say that probate had been taken out at the time the payment was made?

Mr. Broxholme: No.

Mr. Bray: Not until three years afterwards.

Mr. Broxholme: I am going to tell your lordships the reason for that, and not only that, but I shall go still further and say this, that even if your lordships say that it does come under this section, we are entitled to the money. I may just tell your lordships the facts with regard to this. The deceased died on the 22nd April; on the 23rd April the widow made an application, down in the country, at Rotherham (the offices themselves are in town), on an application form stating that she was the legal representative and that she was entitled to the money.

Mr. Justice Mathew: What is the chapter?

Mr. Broxholme: Chapter 60, my lord. The next day was Good Friday, and the very next day after that they paid the money over. Now what I say is, that even if your lordships were to say that it does come under this particular section, which I submit it does not, under this particular section they must receive some evidence to show that the person who applies for the money is entitled by law to it. They must exercise a certain amount of care before they do it. They must not, merely on the *ipse dixit* of the person who applies for this money, hand it over directly. They must make certain enquiries as to whether the person is the legal representative or not, before they hand this money over. In this case there are the facts which I have stated, that on the 22nd the man died; on the 23rd there was the application; the 24th was Good Friday, and on the 25th the money was paid, not in London.

Mr. Justice Mathews: Why not? They wanted to bury the unhappy man. Here is the widow of a man who has paid premiums on the policy

taken out in the name of the husband, and she applies in the ordinary way to clear off the debts and funeral expenses, and gets the money. Then three years afterwards the executors have the hardihood to claim from the society that they should be paid over again.

Mr. Justice Denman: On behalf of whom were they acting? Is there a will?

Mr. Broxholme: There is a will.

Mr. Justice Denman: Does that leave everything to the widow?

Mr. Broxholme: No, it leaves it to the executors upon trust for the widow and for the children.

Mr. Justice Denman: For the widow for life?

Mr. Broxholme: Yes, for the widow for life and then for the children.

Mr. Justice Denman: How much is it?

Mr. Broxholme: Only £11 5s.

Mr. Justice Denman: Much the children will see of it!

Mr. Broxholme: We have not seen anything of it, and from what I can understand we are not likely to.

Mr. Bray: As a matter of fact it was paid for the funeral expenses—that is the point.

Mr. Justice Denman: It buried him.

Mr. Broxholme: What I say with regard to it is this, that the learned judge of the County Court decided wrongly on this particular section. He said that the defendants were protected by this sub-section 5 of section 15. I say that under it they are not protected, because neither of the eventualities have occurred under which they would be protected; namely, there has been no nomination, nor has there been an intestacy. The testator left a will and left executors. This woman goes and applies for this money and they do not take the trouble to find out whether she is entitled to it.

Mr. Justice Mathew: Where do you get about the intestacy?

Mr. Broxholme: Sub-section 4, my lord.

Mr. Justice Mathew: "If any member of a society dies intestate and without having made any nomination under this Act which remains unrevoked at his death, such sum shall be payable"——

Mr. Justice Denman: What is a nomination?

Mr. Broxholme: It nominates some person to receive the money at his death, I think I may take that shortly. That is what it comes to.

Mr. Justice Denman: He did not nominate anybody?

Mr. Broxholme: No.

Mr. Bray: Sub-section 5 is the one.

Mr. Justice Mathew: "Such sum shall be payable, without letters of administration to the person who appears to a majority of the trustees, upon such evidence as they may deem satisfactory, to be entitled by law to receive the same. 5. Whenever the society after the decease of any member, pays any sum of money to the person who at the time appears to the trustees to be entitled under this section, the payment is valid and effectual against any demand made upon the trustees, or the society, by any other person." That "any other person" there, is said to cover executors or administrators. Why should not it?

Mr. Broxholme: Very likely it might, what I say is that it is "entitled under this section."

Mr. Justice Mathew: Section 15.

Mr. Broxholme: Yes, and that section only deals with intestacies and non-nominations.

Mr. Justice Mathew: No, I do not see that.

Mr. Justice Denman: It deals with cases where "it appears to the trustees."

Mr. Bray: That is the point.

Mr. Justice Denman: Suppose the trustees make a wrong judgment in the matter honestly, and think it comes under the section when it does not?

Mr. Broxholme: Then certainly if, after having investigated the matter, they come to a wrong conclusion, they would be protected.

Mr. Justice Denman: Do you say that they did not?

Mr. Bray: That is a question of fact.

Mr. Justice Mathew: You cannot suppose that the widow committed a fraud.

Mr. Broxholme: There is no evidence on that question of fact, but I should say it is very much like a fraud.

Mr. Bray: She sends in an application and makes a statement.

Mr. Justice Mathew: Sub-section 5 goes beyond sub-section 4. Sub-section 4 applies, as you say to the case of intestacy.

Mr. Broxholme: Yes.

Mr. Justice Mathew: Sub-section 5 is, "Whenever the society after the decease of any member pays any sum of money to the person who at the time appears to be entitled under this section"—that is, under the whole section 15—that is, a person entitled apparently in respect of the policy.

Mr. Broxholme: That would be only in the case of intestacy or non-nomination.

Mr. Justice Mathew: No.

Mr. Justice Denman: It is the whole section.

Mr. Broxholme: The whole section only deals with those two cases. This section does not deal with any other cases beside those two.

Mr. Justice Denman: I think you are wrong.

Mr. Justice Mathew: You say it only applies to those two—those two exhaust the whole position. It is not supposed in these cases that there will be a will. I suppose it does not happen once in 500 times. It is supposed the course to be taken is to nominate, or to leave, some member of the family to take the money.

Mr. Justice Denman: Is there any form of nomination required by the Act?

Mr. Broxholme: I do not know.

Mr. Bray: I am told there is a form of nomination.

Mr. Broxholme: Under the policy itself, the defendants charge their estate to pay the legal representative.

Mr. Bray: That is not the fact.

Mr. Broxholme: The widow was not the legal representative and has not been the legal representative at any time.

Mr. Justice Denman: She was presumably legal representative until there was a will heard of.

Mr. Broxholme: Yes, she might be presumably, but she was not in fact.

Mr. Justice Denman: How long a time are you to wait and see whether there is anybody more likely to appear to be entitled?

Mr. Bray: The whole object is to pay these small sums to the widow.

Mr. Broxholme: I know the object of the rules, but I submit they must be reasonable.

Mr. Justice Mathew: Where does the Act say that? What is more reasonable than to suppose that the widow, who has to pay for the funeral is the person to whom a small sum of money is to be paid? The section provides for it.

Mr. Broxholme: I should say that it would not be reasonable to suppose the widow would be, because she is not always, the legal representative.

Mr. Justice Mathew: The company may suppose intestacy and think the widow is entitled to receive it. That is what was done in this case.

Mr. Justice Denman: If anybody is likely to take out administration for £11 5s., the widow is more likely than anybody else.

Mr. Broxholme: Several different policies have been taken out in different companies, and she has received other moneys. Your lordship

was asking just now whether there was a suggestion of fraud: I think it is only right I should inform your lordship of the fact that this is not an isolated case.

Mr. Justice Mathew: Then is the society to suffer for a fraud of this sort? Is not this section framed for the very purpose of protecting them against it?

Mr. Broxholme: Yes, it is, but then I submit they ought to use ordinary discretion in the matter.

Mr. Justice Mathew: What is ordinary discretion?

Mr. Broxholme: They ought to receive a certain amount of evidence.

Mr. Justice Mathew: Are they to suppose that a person will seek to receive the money on fraudulent pretences?

Mr. Justice Denman: Are they to employ a solicitor to search for a will?

Mr. Broxholme: No, but if they had only just made an enquiry of one day longer, they would have been able to discover whether she was the legal representative or not.

Mr. Justice Denman: When was the probate taken out?

Mr. Broxholme: In May.

Mr. Justice Denman: How long after they had paid the money?

Mr. Broxholme: About a month.

Mr. Bray: And the application was not made till three years after?

Mr. Broxholme: Yes, because the matter had been thrown into Chancery.

Mr. Justice Denman: I hope Chancery did not send it to be inquired into before the County Court Judge.

Mr. Broxholme: Yes, they did. It was before the Chief Clerk, and the Chief Clerk gave his consent to it. What I am putting to your lordships is that they must exercise a certain amount of discretion in the matter.

Mr. Justice Mathew: There is no obligation to use what you call discretion. They are not to suppose a person has committed a gross fraud. There is no indiscretion in believing that people are honest I hope.

Mr. Broxholme: Let me put a case. Suppose this policy had been stolen by a thief, and suppose that thief presented himself to the company and stated that he was the legal representative.

Mr. Justice Denman: Or produced a forged probate.

Mr. Broxholme: Yes,—not a forged probate.

Mr. Justice Denman: There might be such a thing.

Mr. Broxholme: I will not go so far as that; but suppose he merely said that he was a policy holder and that he was the legal representative.

Mr. Justice Denman: You are asking us to define what the meaning of the words "shall appear" is.

Mr. Broxholme: I submit it is "shall reasonably appear."

Mr. Justice Mathew: The widow, not presumed to be dishonest, and having to bury the deceased does not reasonably appear entitled?

Mr. Justice Denman: And having £11 5s. at stake in the matter?

Mr. Broxholme: Yes, but under these circumstances I submit that a thief might go and do this, and they might pay the money over and say, "Oh, we are shielded under the Act."

Mr. Justice Mathew: You say it must reasonably appear to the trustees. Is not it reasonable to suppose that the widow would be regarded in that way?

Mr. Broxholme: I will only point out this also, that this occurred down in the country, and the office is up in town, and it would have had to be sent up to town. Under these circumstances it could not have possibly come before the trustees. The application must have been made directly, and the matter never laid before the trustees. It could not have been, because there was the Good Friday intervening. It was simply paid over by the agent down there, without the trustees having looked into the matter. Of course I cannot put it further.

Mr. Bray: That is her written application delivered. (Producing same.)

Mr. Broxholme: In which she says she is the legal representative.

Mr. Justice Denman: You have said all that is to be said.

Mr. Broxholme: I cannot carry it any further. I submit that this sub-section does not apply except only in the cases of intestacy and non-nomination, and that, in the second place, if it does apply they ought to have exercised a reasonable amount of discretion, which ordinary men would do, in taking care not to pay over the money to people without investigating whether they have a right or not to it. I submit that they did not exercise in this case any reasonable care.

Mr. Justice Denman: I think we cannot decide here that the learned County Court Judge was not right. The question raised seems to be this, whether we ought to lay it down as a strict and absolute rule that the society should never pay a claim on a small policy of insurance to a widow, unless the widow produced something like strict proof that she was the person entitled. I do not think that that is the meaning of the words "who at the time appears," I think that means "reasonably appears" with reference to all the circumstances of the case and with reference to the amount and with reference to the nature of such claims and the probabilities of a person claiming being the person who is entitled. Here is a widow who comes for £11 5s. due from a friendly society, and the object with which she comes, we are told—I do not know whether it appears upon the note—is to pay the funeral expenses

of her husband. At all events, whether that was so in fact or not, it is highly probable that the society would think, and would naturally and reasonably take into account the fact that a widow who loses her husband, insured in a friendly society, wants the money for the purpose of burying her husband and that she is more likely than any other person in the world to be the person who is his legal representative, and that there is an intestacy in the matter. I do not see that there is any ground for thinking that this was an unreasonable piece of conduct, and certainly, looking at the fact that the will itself was not proved until a month after, and that it was not until three years after that the executors came forward and felt it their bounden duty to proceed in Chancery against the London Friendly Society, or to proceed with an action against them for the purpose of getting this £11 5s., I do not think it is a case in which there are really any merits upon which we ought to hold the County Court Judge to have been unreasonable or wrong. I think he was right upon the whole in law and fact.

Mr. Justice Mathew : I am of the same opinion.

Mr. Bray : It is dismissed with costs ?

Mr. Justice Mathew : Yes.

CASE 251.

HIGH COURT OF JUSTICE, QUEEN'S BENCH DIVISION. 1897. *March* 15. *Before* CAVE, J., and LAWRENCE, J.

DUNCAN *v.* DOWDING.

The Right of Police to enter Friendly Society Lodge Meetings—Conviction under the Licensing Law quashed.

This was an appeal by way of special case from the decision of the Recorder of Bristol, who had affirmed the decision of the justices of the City of Bristol convicting the appellant, a licensed victualler, of an offence under the Licensing Act, 1874, he having failed to admit two police officers to a room in which certain Buffaloes were holding a lodge meeting.

Mr. Candy, Q.C., and Mr. Maddison appeared for appellant ; while Mr. Vachell represented the respondent.

Mr. Candy said the appellant was the proprietor of a fully licensed public-house at Bristol, known as the Brandy Cask, and on the evening of April 23rd last a police-sergeant and a constable heard music and singing coming from the appellant's premises. They entered the house, and proceeded upstairs to a room which was then in the occupation of a society known as the Royal Antediluvian Order of Buffaloes, and to the exclusive occupation of which on every Thursday evening the members of the lodge were entitled, under an agreement tenancy, dated March 17th, 1892. The police officers were refused admission by the "tiler," who looked through an aperture in the door and saw that they were not in possession of the sign. The officers afterwards saw the appellant,

and told him that they wanted to visit the room. He replied that they could not, as it was in the occupation of Buffaloes—a secret society. Appellant was summoned under section 16 of the Licensing Act, 1874, for refusing to admit the police officers to the room in question, and was convicted. The Recorder, on an appeal to Quarter Sessions, affirmed the conviction, and he (the learned counsel) now submitted that the decision of the learned Recorder was wrong and ought to be quashed.

Mr. Justice Cave asked what violation of the Licensing Act was it that the police officers entered the house to prevent or detect.

Mr. Candy said at first it suggested that they went there to see if the appellant had a music and dancing license. Now he understood they went there to prevent or detect excessive drinking.

Mr. Justice Cave: Can a police-constable demand to enter a bedroom in a hotel?

Mr. Candy: Yes, according to my learned friend who supports the conviction.

Mr. Justice Cave: It will take a great deal to convince me of that. We had better hear what is the violation suggested in this case.

Mr. Vachell said it was suggested that the police went to the premises in order to see whether there was excessive drinking going on, or whether any other offence against the Licensing Act was being committed.

Mr. Justice Cave: But an officer must have some ground for going there. He cannot of his own sweet will and pleasure enter any room on licensed premises. If he could, he might enter a bedroom occupied by a man and his wife. His lordship also instanced the case of a gentleman occupying a private sitting-room in a hotel with his wife and daughter, and asked, supposing the daughter played and sang to her parents, would a constable be justified in demanding admission to that room?

Mr. Vachell replied that he would, if he had any reasonable ground for supposing an offence was being committed there.

Mr. Justice Cave, in delivering judgment, said that the power of entry of licensed premises for the enforcement of the Licensing Acts included the right of admission to any room which was part of the premises covered by the license, at any time and under all circumstances, was a great deal more than he was prepared to hold. To say that in a room which was occupied by a gentleman, his wife and daughter, because the latter was asked to sing in the evening with a view of beguiling the monotony of staying at such a place, that therefore any constable who might be about was entitled to demand admission to that room to see what they were doing, seemed to him a very monstrous thing indeed. So again it would be rather a strong thing to say that a license-holder could be convicted for refusing to admit persons into a private room when he no longer had control over it, and it might be was prevented from using it himself. There was nothing to prevent a constable going over the public part of the licensed premises, but he should not hold that he was at liberty to go all over the house, including rooms not actually in the occupation of the landlord, but of guests, solely because he chose to say he was there for the purpose of detecting or preventing some offence against the law. Had it been shown that

there had been excessive drinking in connection with the society on any previous occasion so that the constables might have had reasonable ground for their action then the court would have been very loth to interfere with the decision of the magistrates. But that was not the case here, and accordingly they considered that the conviction ought to be reversed. Mr. Justice Lawrence concurred.

The conviction was quashed with costs.

N.B.—For hearing before the Recorder see ante page 128.

CASE 252.

KEIGHLEY COUNTY COURT. *Before* JUDGE BOMPASS, Q.C. 1897. *March* 17.

LAVIN *v.* HOWLEY.

Friendly Society — Nomination — Will — Necessary notice of revocation of nomination not given.

In this case, Edward Lavin, of Bradford, as the executor and legatee under the will of his mother, Catherine O'Hara, sought to recover from Maria Howley, spinster, Gladstone Street, Keighley, £45 12s. which had been paid to her by the Liverpool Victoria Legal Friendly Society in respect of two policies of insurance on the life of the deceased. The testatrix before her death executed a will, and by a codicil she revoked her nomination, and left the money to the plaintiff, but this alteration was not notified to the society, as the nomination had been. His Honour said the facts were admitted, but some rather important points of law were raised in the case. First, as to the effect of the payment by the society of the money, it was argued on the one hand that this gave to the defendant, as the nominee of the deceased, an absolute right to the money; while, on the other hand, it was contended that the payment over by the society merely protested it, without settling the question as to who was entitled to receive. This question depended mainly upon the Act of Parliament enabling these nominations to be made, and in spite of the view taken by the late County Court Judge Cox, to which reference had been made, his own conclusion was that the effect of the nomination was the same as the effect on a will, as giving to the person nominated the property in the money paid over. The Act 38 & 39 Vic., c. 60, s. 15, set forth certain privileges of registered societies, and the position was set up that these were only privileges to the society, and not to the members. But, surely, it was the privilege of such a society to confer rights upon its members which non-members would not possess, for this was one of the things most sure to attract members. His Honour went on to express his conviction that these meet the difficulties of societies formed to encourage thrift among classes of the people who did not often hold property of any great amount of value, and who were anxious to avoid the expense attendant on making and proving a will. Such cases placed societies in a difficulty in regard to the payment out of benefits, and the Act appeared to have had as its object the affording of a simpler method of disposing of this money by providing what he might term a "statutable will" by the simple method of nomination. It seemed to him that upon the society's paying to the nominee of the deceased the sums of money in question, the defendant became absolutely entitled to them for herself, and was

under no liability to anybody else in the matter. The next question raised—that this was an invalid nomination, because by the rules of the society the person to be nominated was to be one of the near relatives of the deceased—he decided also in favour of the defendant. As to the question of revocation, it was admitted that no "writing under her hand similarly delivered or sent," had reached the society altering the original nomination, and he held therefore that the nomination remained valid, and judgment must be for defendant.

CASE 253.

BIRMINGHAM COUNTY COURT. 1897. *March* 25.

GARRATT *v.* LIVERPOOL VICTORIA LEGAL FRIENDLY SOCIETY.

Friendly Society—Claim for Money payable at death of Member—Deceased Wife's Sister—Executrix—Next of Kin.

This was an action brought by Phœbe Garratt, of 7, Railway Terrace, Barford Road, Birmingham, against the Liverpool Victoria Legal Friendly Society, to recover £8 16s. on a policy of insurance. Mr. Dorsett (instructed by Mr. P. Baker) appeared for the plaintiff, and Mr. Broadbridge, of Liverpool (instructed by Mr. Tickle, of London, and Messrs. Bickley, Lynex, and Bickley, of Birmingham), for the society.

Mr. Dorsett said the plaintiff married a man named Henry Rixton, but as she was his deceased wife's sister, and the marriage was illegal, Rixton made a will constituting her his executrix and sole legatee. At the time of the husband's death his policy in this society, and his contribution card, were in the hands of his mother, through whom he had been in the habit of paying his contribution. It was arranged by the parties that the plaintiff and the mother of George Rixton, a brother of the deceased, should go to the office of the society in Temple Street, Birmingham, and receive the money. When they got there, however, the plaintiff was left outside in the cab, and when the others returned she was told that the money could not be had. Subsequently she heard that Mrs. Rixton had had the money. She wrote to the company, who replied that the money had been paid to the next-of-kin, and that they could not pay it twice.

Plaintiff, in her evidence, said that when they got to the office she was going to get out of the cab, when the solicitor they took with them put his hand out and stopped her. In cross-examination, plaintiff denied that she had simply been asked to go in case of her signature being required, and that Mrs. Rixton had promised to give her something if she got the money. The deceased died in September, and she did not take out the probate until December 10th. She had never seen the policy, but she had often seen her husband give his mother money, and knew that this included the payment for the insurance. Deceased had contributed to his mother's support for years. She believed he was insured when he was eighteen, but she could not say whether or not he had contributed £40 in premiums. Mr. Hooper, the solicitor in question, was not acting for plaintiff in any way, and had no authority to receive money on her behalf.

For the defence it was contended that the policy was not the property of the deceased at all, but was taken out by his mother, who paid all the premiums; also, that under their rule 17 the society were justified in paying to the next-of-kin in the absence of notice of any will or letters of administration.

Mrs. Rixton was called, and stated that she took out the insurance in opposition to deceased's wishes, and had kept up the payments herself. She insured all her children, and when one of her daughters "took another name," she transferred the payments to the insurance on her son Henry in order to increase the benefits. She insured originally in order to have money to bury her children; but deceased was in the Foresters, and he was buried out of the money received from that society. When her son left her she kept up the insurance for her own benefit. Her son had contributed to her support, but had not given her any money specially for the premiums. She asked plaintiff to go to the office with her, because she had been told that probably plaintiff's signature would be required. When they got there the solicitor told her that plaintiff's signature was not wanted, so they left her outside. When she came out she told plaintiff that they had not received the money. That was true, because the solicitor, who picked it up from the table had not then handed it over to them.

The District Manager (Mr. J. E. Tattersall) said that he succeeded in December to a manager who died. As far as he was aware no notice of probate had been received before the money was paid. When the claim was made he asked Mr. Hooper to make inquiries into the circumstances of the family, and on that gentleman's assurance he paid the money to the mother as the next-of-kin. He knew of the existence of the plaintiff, but was informed that her marriage to deceased was not legal. By Mr. Dorsett: He made the payment to Mrs. Rixton as the next-of-kin in accordance with rule 17, and not because she had paid the premiums. The latter defence was simply one of the defences in the action.

A verdict was given for the plaintiff, the Deputy-Judge remarking that the defence had more ingenuity than merit. Obviously the person entitled to the money was the executrix. As to the question of fact, whether the policy belonged to the mother or to the son, he thought it exceedingly improbable that Mrs. Rixton would go on paying, in the hope that she would outlive her son, premiums on a policy which in such cases would have been void all through.

Mr. Broadbridge asked for leave to appeal as to the effect of rule 17, under which 6,000 claims a year were paid to the next-of-kin.

The Deputy-Judge refused the application on the ground that no point of law arose. The defendants had paid the money wrongly through ignorance as to a matter of fact. The rules of the company did not absolve them from paying the right person if they had paid the wrong one.

On the application of Mr. Dorsett costs on a higher scale were allowed.

CASE 254.

COURT OF APPEAL. 1897. *Feb.* 20. *Before* LINDLEY, J. RIGBY, J. A. L. SMITH, J.

THE GUARDIANS OF THE WEST DERBY UNION *v.* THE METROPOLITAN LIFE ASSURANCE SOCIETY.

Contract—Loan for fixed period repayable by instalments—Implied alteration of contract by Act of Parliament—Poor Law Loans Act, 1871 (34 & 35 *Vic.*, *cap.* 11), *sec.* 2.

This case raised a question of very great importance to persons who have advanced money to poor law guardians upon the terms that such loans should be repayable by instalments extending over a fixed period of years, such instalments consisting partly of principal and partly of interest at a rate fixed by the contract of loan, the question being whether by virtue of section 2 of the Poor Law Loans Act, 1871, the guardians are entitled to pay off such loans at any time when they may be able to reborrow the money at a lower rate of interest. The West Derby Guardians, in 1875, borrowed £30,000 from the Metropolitan Life Assurance Society, at 4½ per cent. interest, on the terms that the loan should be repaid by equal instalments, each consisting of principal and interest, extending over thirty years. In September, 1895, the guardians, without any prior notice to the lenders, obtained from the Local Government Board authority to repay the unpaid balance of the loan and to borrow money for that purpose, the object of the guardians being to obtain the money at a lower rate of interest—that is, 3 per cent. instead of 4½ per cent. Having obtained this order the guardians served a six months notice upon the lenders of their intention to pay off the unpaid balance of the loan. The question which was raised by the special case was whether the guardians could compel the lenders to accept payment of the amount of principal unpaid with interest thereon at 4½ per cent. to the day of payment. North, J., held that the guardians were so entitled, and against that decision the assurance society appealed. Section 2 of the Poor Law Loans Act, 1871, upon the construction of which the decision depended, enacts that: "If any guardians or managers, having borrowed or hereafter borrowing money under the authority of the Acts referred to, shall be able at any time to obtain a loan at a lower rate of interest than that secured by the charge previously made by them, they may apply to the Poor Law Board for an order to enable them to redeem the balance of the loan, and to borrow so much money as may be necessary for that purpose; and if the said board shall issue their order in that behalf, the said guardians or managers may borrow the requisite amount to redeem such balance, and charge the fund to which the original loan was charged with the repayment of this additional loan in so many instalments as shall be outstanding at the time when the loan is redeemed, but not more. Provided that in the event of any loan outstanding at the time of the passing of this Act, no such redemption shall take place without the consent of the person or persons to whom the loan shall be owing." Section 3: "Loans may be repaid by half-yearly instalments, and where they may have been contracted to be repaid by annual instalments they may, with the consent of the lenders, be repaid by half-yearly instalments of the principal and interest." The Local Government Board has since been substituted for the Poor Law Board.

The majority of the court, Lindley and Rigby, L.J.J., allowed the appeal, A. L. Smith, L.J., dissenting.

Lindley, L.J., said: The question raised by these appeals is whether poor law guardians, who, since 1871, have borrowed money on the security of poor rates, upon the terms of paying off the principal, with interest, at an agreed rate by equal annual instalments extending over thirty years, can compel the lenders to accept payment of the unpaid principal sum whenever the guardians can borrow the amount necessary for the purpose at a lower rate of interest than that which they agreed to pay. North, J., has decided that they can do so under the powers conferred upon them by the Poor Law Loans Act, 1871, 34 & 35 Vic., c. 11, s. 2. From this decision the lenders have appealed. It is conceded that the guardians have no such power apart from the statute in question, but it is said that the practical effect of that statute is to introduce into every mortgage of poor rates, made after the passing of the statute, a provision enabling the guardians to pay off the mortgage at any time if they can borrow money at a lower rate of interest than that mentioned in the mortgage. It is contended that this is no hardship on the lenders, because they must be taken to know the law and to have made their bargains with reference to it. No one pretends that the lenders can call in the money, if it is to their interest to do so. The bargain, therefore, if it really is as the guardians contend, is a very one-sided one, and one which lenders would not make without raising the terms on which they would otherwise be willing to lend. However, I agree that, if the legislature has imposed upon the lenders the obligation of accepting their money upon terms not expressed in their security, they must accept it upon those terms, whether they consider them harsh or unfair or not. They should have thought of that before they lent their money. But, unless the legislature has clearly imposed such an obligation upon them, they may well complain of the hardship and unfairness of such a departure from the plain language in which their contract and security are expressed. Before examining the Act to which I have referred, I pause to ask, what must be found in it to confer upon the guardians the right to pay off a mortgage on terms other than those expressed in it? A power to borrow in order to pay off is by no means enough, for such a power imposes no obligations, either on persons to lend or on lenders to be redeemed. Such a power assumes that persons can be found willing to lend, and also that lenders are willing, or have agreed, to be redeemed as desired. What has to be found in order to support the contention of the guardians is some enactment imposing upon the lenders an obligation to take the principal due to them upon other terms than those mentioned in their express contract. Unless this obligation is clearly imposed upon them by the legislature, it cannot be imposed at all. To impose such an obligation by an inference from language which does not clearly impose it appears to me to be wrong in principle, unless the inference is what is called a necessary inference—*i.e.*, unless the language relied upon can have no other meaning. [His lordship read section 2.] Now, apart from any inference drawn from this proviso, there is nothing whatever to impose any obligation on lenders of money to guardians to accept repayment otherwise than upon the terms mentioned in their securities. The section simply extends the power of guardians to borrow. Such a power was wanted, for, even if lenders agreed that they would accept or were willing to accept payment otherwise than by instalments, the guardians had no power to borrow money in order to pay them off. It is to be observed

that the application to the Poor Law Board for powers to redeem and borrow for the purpose is made without notice to the lenders, who are not consulted or heard by the board. The Act does not protect them in any way, not even by requiring six months' or other reasonable notice so as to give them time to find another investment. Further, if an order is obtained from the board, all that Act says is that the guardians may borrow the money necessary to redeem and charge it on the fund charged by the original loan. All this merely extends their powers; no right to pay off the lenders against their consent, and on terms not expressed in their contracts, is conferred on the guardians. No obligation whatever is imposed on the lenders by the enacting part of the section. I pass to the proviso. It is in terms confined to loans made before the Act passed, and is clearly inserted to protect the persons to whom such loans may be owing from being paid off without their consent by means of money borrowed under the powers of the Act. This is what the proviso says, and this is all it says. It says nothing about loans made since the Act. It is contended that the necessary inference is that such loans can be paid off without the consent of the persons to whom they are owing, and although there is nothing in their securities to compel them to take their money otherwise than by instalments. I am quite unable to see the necessity for drawing any such inference. The proviso is consistent with other views, from which no such inference can be drawn. In the first place, it may have been inserted, not because it was plain that the enacting part of the section did apply to loans made before the Act, but because persons who were regarding the interest of the owners of such loans were afraid that such a construction might be adopted, and thought it prudent to remove all doubt upon the point by introducing language the meaning of which could not be mistaken. Another explanation was suggested by counsel for the appellants—viz., that the proviso was inserted in order to prevent the powers of the Act from being used to pay off lenders who had agreed before 1871 to accept payment out of any moneys which the borrowers might happen to have applicable to the purpose of paying off loans, but which moneys could not before 1871 have been obtained by borrowing for that purpose. This explanation of the clause may be correct. The form of security given in the Union Loans Act, 1869, to which I shall again refer presently, shows that redemption otherwise than by yearly instalments was contemplated, and I suppose that such redemptions did, in fact, occasionally take place, but, of course, only with the consent of the lenders. I do not know whether before the Act of 1871 loans were in practice expressly made redeemable otherwise than by instalments; but, whether they were or were not, they might have been, and I cannot therefore reject this explanation of the proviso as wholly unworthy of consideration. It would have the effect suggested in the cases supposed, if any such there were. The anxiety of the legislature not to affect the rights of the owners of loans made before 1871 is apparent, not only from the proviso in section 2, but from sections 1 and 3 also. But section 3 also shows that the legislature left the borrowers and lenders to make their own bargains after the Act passed, and did not intend to interfere with those bargains without the consent of the lenders. This section enables loans to be repaid by half-yearly instalments, instead of by annual instalments as under the previous Poor Law Loans enactments. But this section 3, which applies to loans made after 1871 as well as to loans made before, expressly says that such half-yearly repayments are only to be made with the consent of the lenders. Now, it seems to me incredible that such a small alteration as this in the

express terms of a written contract can only be made with consent, and yet that the lenders shall be liable to be paid off at any moment without notice, although no bargain to that effect is to be found in the security given to them. Again, it is to be observed that the form of security given by the Union Loans Act of 1869, 32 & 33 Vic., c. 45, s. 6, is left as it was, and the proviso in that form would hardly have been continued without alteration if the Act of 1871 had (as contended) made it part of every bargain that the guardians should be at liberty to pay off the loan at any time, if they could obtain money for the purpose. The proviso is that nothing contained in the charge given to the lenders shall prevent them from receiving repayment of the loan before the day of payment of the last instalment, if willing so to do. With such a clause still in the form the court is asked to hold that it is also part of the bargain that the lenders must accept payment before the time stipulated, although, in fact, they never in terms agreed to do so. The legislature in 1871 evidently desired to extend the powers of guardians in the interests of the ratepayers, and this has been very effectually done, however the Act of 1871 is construed. But I can see nothing in the Act to prevent guardians after the Act from borrowing on such terms as they, in the interests of the ratepayers, think proper to agree to. The effect of the construction of the statute contended for by the guardians is to place upon them a fetter which must seriously affect their powers of borrowing. If that construction is right—if the statute incorporates as part of every contract of loan to guardians such a condition as they contend it does—it will follow that they can only borrow upon condition that they shall be at liberty to pay off the principal sum borrowed whenever they can advantageously borrow money elsewhere to enable them to do so. Such a fetter would go far to prevent the guardians from effecting loans on the most advantageous terms they could otherwise obtain at the time when they wanted money. I can find nothing in the Act to fetter the guardians in this way. Looking at the matter from the lenders' point of view, I can find nothing in the Act which expressly or by necessary inference requires the court to hold that, if guardians think proper to borrow money on the express terms of paying a fixed rate of interest, and of paying off the loan by instalments, they can nevertheless require the lenders to take back the unpaid principal at any moment, and without previous notice. If the legislature really meant that all loans to guardians made after 1871 should be subject to such a condition, all I can say is that they have not said so, and I cannot myself infer from the language used a direction that, for the future the borrowing powers conferred by the Act can only be exercised for the purpose of making such very one-sided bargains. In my opinion, the decision of North, J., is erroneous, and the appeal ought to be allowed.

Counsel: Sir R. T. Reid, Q.C., and Mr. Danckwerts; Mr. Cozens-Hardy, Q.C., Mr. Swinfen Eady, Q.C., Mr. R. J. Parker, and Mr. W. E. Cleaver.

CASE 255.

IN THE HIGH COURT OF JUSTICE.
CHANCERY DIVISION.
Before
MR. JUSTICE NORTH (FOR MR. JUSTICE CHITTY).
1895.
March 1.

SCOTT *v.* EVANS.

Friendly Society—Illegal division of funds—Dissolution—Rules.

This was a motion for an injunction to restrain the defendants (the trustees and officers of Court Glyn Ebbw, No. 4,135) from appropriating or allowing to be appropriated any portion of the Sick and Funeral Fund belonging to the court for any other purpose than paying sick and funeral allowances claimable under the rules, and from dividing its funds in any manner inconsistent with law 49, section 1, sub-sections *(b)* and *(f)*, and from dissolving or attempting to dissolve the court otherwise than in accordance with the general laws.

The writ also claimed a perpetual injunction :—An account of moneys already divided ; and such further relief as the plaintiffs (the trustees of the High Court of the Order) should be entitled to.

Mr. Byrne, Q.C., M.P., and Mr. O. Leigh-Clare appeared as counsel for the Order (instructed by Mr. Ward, of Dudley, the solicitor for the Order).

Mr. C. Lyttleton-Chubb (instructed by Mr. T. G. Powell, of Brynmawr) was counsel for the defendants.

On moving the court.

Mr. Byrne, Q.C., said : My lord, I have a motion in a case of Scott *v.* Evans, which, I think will be setted ; but I am hardly in a position at the present moment to take it. Perhaps we may be able to mention it later in the day ; if not it must stand till next week.

Mr. Justice North : Very well.

At a later period of the day.

Mr. Byrne, Q.C., continuing said : My lord. In that action of Scott *v.* Evans, we have now arranged the terms of an order ; but it will be necessary to mention the nature of the action and the kind of judgment we propose to take. The plaintiffs are the trustees of the Ancient Order of Foresters' Friendly Society, and the defendants are the trustees and officers of what is called a subordinate court. By the constitution of the society there is the central body or general association, then there are districts constituted of three or more courts of the Order united together to divide the liabilities for funeral allowances, and then there are subordinate courts, some in district, and some out of district. The Court Glyn Ebbw, of which the defendants are trustees and officers, is a subordinate court out of district. Each of these courts has its own separate rules, but they are all governed by the general laws of the Ancient Order of Foresters. My lord, by general law 49, sub-section 1, on page 44 of the book which I will hand to your lordship, each court shall make its own rules except otherwise provided for the government

thereof, and provided always such rules are in accordance with the general laws of the Order. So that the general laws of the Order govern all the courts. Then by sub-section *(b)*, "The account of each fund shall be kept separate and distinct; and any court appropriating any portion of the Sick and Funeral Fund for any other purpose than paying the sick and funeral allowances claimable under the rules, shall forfeit the money so appropriated to the High Court Relief Fund to be recovered by legal process as a penalty, and the court shall also be fined £5, and 10s. per day until the money is paid into the said fund."

Mr. Justice North: What is the High Court?

Mr. Byrne: That is the High Court of the Order.

Mr. Justice North: Of the Foresters?

Mr. Byrne: Yes; not the High Court of Justice. By section *(f)* of general law 49, "It shall not be lawful for a court to divide any of its funds nor any part thereof which shall be devoted solely to carry out the objects of the society. Any court doing so shall forfeit the money so divided to the High Court Relief Fund to be recovered by legal process as a penalty; and the court shall also be fined £5, and 10s. per day until the money is paid into the said fund." The defendants are the trustees of the Glyn Ebbw Court.

Mr. Justice North: That is a district court?

Mr. Byrne: No; it is called "out of district," having rules of its own which I need not trouble your lordship with, because it does not affect this question. They were in process of dividing their funds not in accordance with any rules entitling them so to do; and thereupon this action was brought by the trustees of the Order, and the motion is to restrain the defendants from appropriating, or allowing to be appropriated, any portion of the Sick and Funeral Fund belonging to the Court Glyn Ebbw, 4,135, a registered branch of the above society, for any other purpose than paying the sick and funeral allowances claimable under the rules of the said branch, and from dividing its funds or any part thereof in any manner inconsistent with rule 49, section 1, sub-section *(b)* and *(f)* of the general laws of the said society, and from dissolving or attempting to dissolve the said branch otherwise than in accordance with the said general laws, and from committing any other breach of such laws.

Mr. Justice North: Sub-section *(b)* applies merely to the Sick and Funeral Fund.

Mr. Byrne: That is so. Sub-section *(f)* applies to any of its funds. Now, my lord, the defendants have been advised in respect of this matter, and they now see that what they were doing was not the right thing to do. The plaintiffs, on behalf of the Order, propose to take judgment in this form. They prefer, if your lordship does not object to my doing so, that I should state the nature of the Order, as they are trustees. They propose to treat this as the trial of the action, and to take judgment for a perpetual injunction as claimed in the writ, and that the defendants do pay to the plaintiffs the moneys improperly divided among the members of the Glyn Ebbw Court contrary to the general laws of the society.

Mr. Justice North: I do not quite understand it. They have divided say £200.

Mr. Byrne: Or more.

Mr. Justice North: Well, take that as a convenient sum. Then this rule says, "that any court so doing shall forfeit the money so divided to be recovered by legal process as a penalty." Is this action a process under that rule?

Mr. Byrne: I take it to be so.

Mr. Justice North: I do not quite understand how the thing works. They have paid this £200 away.

Mr. Byrne: Among their own members.

Mr. Justice North: And this rule says they are to forfeit that £200 they have paid away.

Mr. Byrne: Yes; we come to this court asking the court to intervene to prevent them completing the division.

Mr. Justice North: As to what they have not divided I quite understand it.

Mr. Byrne: Then the trustees would be personally liable if they paid away this money wrongfully. There is an authority for proceeding in that way [viz., Cox *v.* James, a case from the Manchester Unity of Oddfellows, heard before Mr. Justice Chitty on February 28th, 1882, but not reported in the Law Reports.]

Mr. Justice North: Under the phrase "The court shall forfeit" you say the trustees personally will be liable.

Mr. Byrne: Yes. They had the money and paid it away. As I understand they now see their way to assenting to judgment in this form if your lordship sees no objection. First, the perpetual injunction; and then order the defendants to pay to the plaintiffs the moneys improperly divided among the members of the Glyn Ebbw Court contrary to general laws, and also the fine of £5, and 10s. per day incurred from the 4th June last till judgment under general law 49, section 1, subsection *(f)*. Then we ask for an account.

Mr. Justice North: That first part would be rather a declaration; you put it as an order.

Mr. Byrne: Yes. I think it would be better as a declaration.

Mr. Justice North: I do not quite see how I can make an *order* in those terms.

Mr. Byrne: Yes; that would be right. Then we ask for an account and the defendants to pay the costs.

Mr. Justice North: The account will be consequential on the direction.

Mr. Byrne: And the plaintiffs undertaking that on payment of all moneys payable under this judgment, the consent of the Order shall be given to a dissolution of the branch in the writ mentioned.

Mr. Justice North: I think it will be better to say that they will "procure" it to be given.

Mr. Byrne: Yes, that is the whole of the order we propose to take; but then, my lord, terms have been made in addition which I do not propose to put in the order. But the parties have agreed and the plaintiffs do not desire as trustees of the Order to be too hard on these trustees and officers of Court Glyn Ebbw, who have acted under the circumstances in the way they have done.

Mr. Justice North: Mr. Byrne, I will listen if you wish it, but I do not quite see what I have to do with that.

Mr. Byrne: That is so, my lord. The trustees would like me to mention it publicly, for they feel, being trustees, a public statement ought to be made. What has been agreed is this: that on payment of certain sums by instalments therein mentioned, making a total payment of £250, to the Order and full costs, which is less than they would be legally bound to make, by the defendants to the plaintiffs, they agree to accept those sums in settlement of all sums payable under the order. In default of payment of the instalments then the judgment is to be enforced; any previous payments to be treated as on account generally.

Mr. Justice North: The result will be that if the parties do complete the arrangements they will waive the taking of the account. Of course, they can apply to stay proceedings if they like.

Mr. Byrne: If your lordship pleases, perhaps I may put liberty to apply to stay.

Mr. Justice North: No, it is not necessary, they can always do that.

Mr. Byrne: Your lordship will forgive me for not stating it more clearly, but the arrangement has only just been put in my hands.

Mr. Lyttleton-Chubb: My lord, I appear for the defendants, and I may perhaps be allowed to say that my clients acted through a mistake. They were not aware of an alteration in the rule, and through a mistake of the printers we mistook the meaning of an advertisement which was inserted, and the members thought they had the consent of the High Court and consequently they divided the money.

Mr. Justice North: Nobody suggests they have done anything more than make a mistake.

Mr. Lyttleton-Chubb: No, I thought I might be allowed to say that.

Mr. Justice North then gave judgment for the plaintiffs, the trustees of the A.O.F. Friendly Society, on the terms agreed upon.

The following is a copy of the judgment and perpetual injunction:—

"Upon motion for an injunction this day made unto this court by counsel for the plaintiffs, and upon hearing counsel for the defendants, and upon reading an order dated the 15th February, 1895, and the plaintiffs and the defendants by their counsel desiring and consenting that the hearing of this motion should be treated as the trial of this action,

"This court doth order that the defendants, Azariah Evans, John Jones, Thomas Evans, Jenkin Morgan, and William Lewis, be perpetually restrained by injunction from appropriating or allowing to be appropriated any portion of the 'Sick and Funeral Fund' belonging to the said Court Glyn Ebbw, No. 4,135, a registered branch of the above-mentioned society, for any other purpose than paying the sick and funeral allowances claimable under the laws and rules applicable to such fund, and from dividing its funds or any part thereof in any manner inconsistent with law 49, section 1, sub-sections *(b)* and *(f)* of the general laws of the said society and from dissolving or attempting to dissolve the said branch, except in accordance with the said general laws, and from committing any other breach of the said general laws.

"And this court doth declare that the defendants are liable to pay to the plaintiffs the moneys improperly divided amongst the members of Court Glyn Ebbw, No. 4,135, contrary to general law 49, section 1, sub-sections *(b)* and *(f)*, and also the fines of £5 and 10s. a day incurred by Court Glyn Ebbw from the 4th June, 1894, until judgment under the said general law 49, section 1, sub-sections *(b)* and *(f)*.

"And it is ordered that the following account be taken, that is to say:—

"An account of what is due from the defendants on the footing of the foregoing declaration.

"And it is ordered that the defendants, Azariah Evans, John Jones, Thomas Evans, Jenkin Morgan, and William Lewis, do pay to the plaintiffs, Samuel Scott, Ralph Parker, Alfred James Dyer, and William Henry Wood, what shall be certified to be due to them on taking the said account, and also their costs of and incident to this action, to be taxed by the Taxing Master.

"The plaintiffs, by their counsel, undertaking that upon payment by the defendants of all moneys payable under this judgment, they, the plaintiffs, will procure the consent of the Ancient Order of Foresters' Friendly Society to a dissolution of the branch in the writ mentioned, and any of the parties are to be at liberty to apply."

CASE 256.

QUEEN'S BENCH DIVISION. HAWKINS AND COLLINS, J.J. 1896. *Jan.* 27.

CRICHTON *v.* WEST AND OTHERS.

Practice — Evidence — Action against Trustees of Friendly Society—Rules of Society—Admissibility of— Friendly Societies Act, 1875, *sec.* 29, *sub-secs.* 2 *and* 6.

This was an appeal by one of the defendants, Waterman, from a judgment of his Honour Judge Meadows White, sitting at the Clerkenwell County Court. The action was originally brought in the High Court, but was remitted for trial in the County Court. The plaintiff, Mr. John Henry Crichton, a licensed victualler, sued the defendants, Mr. George West, Mr. Joseph Brindley, and Mr. Thomas Waterman, as trustees of the Loyal United Friends Sick and Burial Fund (lodges Nos. 4, 5, 6, 19, 33 and 56) upon a dishonoured cheque

drawn by the defendant George West and one A. H. Skinner, on account of the Loyal United Friends Sick and Burial Fund, on the London and County Banking Company (Limited), and payable to the said A. H. Skinner or bearer, which cheque was cashed by the plaintiff. It was said that the defendant Waterman was liable upon the dishonoured cheque as a trustee for a registered society or a branch of a friendly society, being sued as representing the branch by virtue of the provisions of the Friendly Societies Acts, 1875, 1877. The defendant Waterman was a trustee of the Loyal United Friends Sick and Burial Fund, and the defendant West was another trustee. Skinner was one of the secretaries. There was a central body called the Order of Loyal United Friends, and by rule 21 of the central body, "all sick fund members belonging to it must pay one penny per quarter to the secretary of the sick fund, who shall pay the same into the lodge account towards the management fund of the Order." By rule 22 of the sick fund, a banking account was to be opened with the London and County Banking Company in the names of six trustees on behalf of the fund. The rule further provided that, "Each cheque for withdrawal of money for payments of sickness, deaths, etc., shall be signed by one trustee and the secretary in whose district the money is required." Skinner obtained the signature of West to the cheque sued upon for the amount necessary for the purpose of the payments due to the claimants on the fund. At that time, as Skinner knew, there was not enough money in the bank to meet it, and, as he had done on several occasions before, he applied to the plaintiff to cash it, which he did, and the amount was distributed by Skinner to the applicants in discharge of their claims. The cheque was dishonoured. The society had always abundant assets to meet the cheque, though not at the moment available in the bank. Skinner anticipated that money would shortly come to the bank to the society's credit, and this, in fact, took place. At the trial before the County Court Judge it was contended that the defendants could not be sued as representing the society, that the sick fund was a separate society requiring separate registration. The County Court Judge held that the sick fund was under the control of the central body, to which every branch was bound to contribute, and that, therefore, under section 29 of the Friendly Societies Act, 1875, sub-section 2, the defendants could be sued as trustees of the fund, and he gave judgment for the plaintiff. In the course of the trial, the County Court Judge admitted the rules of the sick and burial fund in evidence, and the defendant, Waterman, now applied that the judgment might be set aside and a verdict entered for the defendant, or alternatively that a new trial might be had on the ground, *inter alia* that the judge was wrong in admitting in evidence the rules of the sick and burial fund of the lodges above named." By the Friendly Societies Act, 1875, 38 & 39 Vic., c. 60, s. 29, sub-s. 2, "A society having a fund under the control of a central body to which every branch is bound to contribute may be registered as a single society." By sub-section 6, "where a society has no fund under the control of a central body to which every branch is bound to contribute, every branch is deemed to be, and must be registered as, a separate society, whether its rules are identical with those of the other branches or not.

Mr. Costello appeared for the appellant; Mr. Whateley for the respondent.

Mr. Justice Hawkins said that the defendant, Waterman, signed the rules of the fund, and so did Skinner. How could it be said that, when

there was a question of Waterman's liability and the rules were signed by him, the rules were not admissible in evidence? The rules were clearly admissible.

Mr. Justice Collins concurred. The question was whether the society came within sub-section 2, or sub-section 6 of section 29 of the Friendly Societies Act, 1875. How was it possible to ascertain whether the society had a fund under the control of a central body except by the rules? The County Court Judge was right, and the appeal must be dismissed.

Appeal dismissed. Leave to appeal refused. Costs of the appeal to be costs against Waterman personally, and not against the society.

CASE 257.

COURT OF QUEEN'S BENCH.
1872.
June 6.
Before
BLACKBURN, J.
MELLOR, J.
LUSH, J.

THE QUEEN *v.* THE REGISTRAR OF FRIENDLY SOCIETIES.

Registration of Trade Union—Duty of Registrar where two applications to register under the same name —Trade Union Act, 1871 (34 & 35 *Vic., cap.* 31), *sec.* 13—*Regulations of Secretary of State.*

By 34 & 35 Vic., c. 31, s. 6, any seven members of a trade union, by complying with the provisions of the Act as to registry, may register the union. By section 13 (2) the Registrar, upon being satisfied that the union has complied with the regulations as to registry in force under the Act, shall register the union; (3) no trade union shall be registered under a name identical with that under which any other existing trade union has been registered; (6) a Secretary of State may from time to time make regulations respecting registry under this Act. The Home Secretary made regulations—(1) the Registrar shall not register a trade union under a name identical with that of any other existing trade union known to him, whether registered or not; (2) upon application for the registration of a trade union already in operation, the Registrar, if he has reason to believe that the applicants have not been duly authorised by the union, may, for the purposes of ascertaining the fact, require from the applicants such evidence as may seem necessary.

A trade union, which had been some years in operation, became divided into two sections, each section claiming to have the governing body among them. Both sections applied to register the trade union by the name which the society had always gone by. The Registrar heard evidence voluntarily given by each party, and finding there was a *bonâ fide* dispute, refused to register the trade union under either

application until the decision of a competent court determined the legal status of the applicants. On rule for a mandamus, obtained by the parties first applying, to compel the Registrar to register the union on their application.

Held that (irrespective of the regulations) the Registrar was right, under the Act, in refusing to register, so as not to alter the position of the parties.

Semble, that the regulations were not *ultra vires*.

Rule calling upon A. K. Stephenson, Esq., the Registrar of friendly societies in England, to show cause why a mandamus should not issue commanding him to register The Amalgamated Society of Carpenters and Joiners, meeting at East Temple Chambers, Whitefriars, London, as a trade union, upon the application, dated the 15th of April, 1872, of H. P. Colliver and six others, according to the provisions of the Trade Union Act, 1871, upon notice of the rule to be given to H. Thompson and another, of Manchester.

The Amalgamated Society of Carpenters and Joiners is a trade union which has been established some years, and had deposited the rules, but was not registered under the Friendly Societies Act, some of its rules being in restraint of trade.

The society was governed by a general council and an executive council, who worked harmoniously for several years, but in May, 1871, disputes having arisen between them before, a complete rupture took place. There then became two bodies, each claiming to govern the society—the executive council in London, supported by twenty branches of the society, and the general council at Manchester, to which the other 222 branches adhered.

After the passing of the Trade Union Act, 1871, 34 & 35 Vic., c. 31 (1), both parties applied in August to the Registrar to be registered, but both applications were refused on the ground that the parties had not complied with the Act. Both parties renewed their application in December, and, after hearing them, the Registrar refused to register either, giving his reasons in writing, which show the facts and grounds upon which his decision was based, and of which the following are the material parts :—

> An application is before me, dated the 23rd December, 1871, requiring me to register the Amalgamated Society of Carpenters and Joiners, as meeting at East Temple Chambers, Whitefriars Street, Fleet Street, London. This application (hereinafter called "the London application") is signed by H. P. Colliver and others, who state they are authorised to make it by a resolution passed by the executive council of the above-named society. Another application is before me, dated the 30th of December, 1871, requiring me to register the Amalgamated Society of Carpenters and Joiners, as meeting at 53, Grosvenor Street, Chorlton-on-Medlock, Manchester. This application (hereinafter called "the Manchester application") is signed by John Thompson and six others, who state that they are authorised to make it by a vote of the whole of the members of the society, taken at meetings summoned for the purpose in the month

of September, 1871, when 3,821 votes were recorded in favour of registering the society, 125 members only voting against the proposal to register.

As both applications are to register a trade union under the same name, if one had been complied with the other must have been refused. Section 34 & 35 Vic., c. 31, s. 13, sub-s. 3.

It appeared from the balance sheets accompanying the respective applications that both related to one and the same society, whose rules, as the rules of the Amalgamated Society of Carpenters and Joiners, had been deposited with me under section 44 of the Friendly Societies Act, 18 & 19 Vic., c. 63, previous to the passing of the Trade Union Act, 1871.

I therefore served notice on both applicants that on the 15th of January, 1872, I should be prepared to hear evidence for or against their respective applications.

Though I am authorised, by regulation 2 of the Secretary of State's regulation of the 8th of December, 1871, to require from the applicants such evidence as may seem to me necessary, no power is given me by the Trade Union Act, 1871, to administer an oath, or to compel the production of any evidence, but I was willing and desirous to hear anything that either of the applicants for registration might be disposed voluntarily to lay before me, with the view of ascertaining whether I could satisfy myself as to the right of either party to obtain registration to the exclusion of the other without requiring that right to be established by litigation; or of ascertaining whether by mutual consent their differences could be arranged, or whether the applicants could be registered under different names.

Both parties stated that they could not consent to take my decision, if adverse, as binding, and would reserve their rights to compel me by mandamus, or otherwise, to register upon their application if I should refuse to do so.

Subject to this statement, each party tendered evidence which satisfied me that differences had occurred in the society, as it existed, under the rules deposited with me previous to the passing of the Trade Union Act, which differences had led, on the 18th May, 1871, to a division of the society into two sections, which were represented by the applicants before me. It also appeared that the funds of the society in the possession of its various branches, as returned by the applicants in their respective balance sheets, amounted on the 31st December, 1870, to £17,568 19s. 4d. It also appeared that the books of the society, whose rules were, as above stated, deposited with me as Registrar of friendly societies, were, and still are, in possession of the London applicants, but it was contended by the Manchester applicants that such possession was illegal.

It appeared, therefore, that the questions at issue were mixed questions of fact and law, depending on the application of the legal construction of the rules as deposited to disputed facts, and that such questions involve very large interests.

I am of opinion that, under the Trades Union Act, 1871, the duties of the Registrar are ministerial, not judicial; that no power is either expressly or impliedly given to him by the Act to call for evidence either oral or documentary, or to administer an oath, and that the regulations made by the Secretary of State cannot confer on the Registrar any power which the Act does not give him.

Though the applicants have voluntarily given me information, they have declined to give me any authority beyond what the Act gives to the Registrar. I express no opinion on the merits of the case of either party, but decline to register the trade union under either application, unless directed by mandamus so to do, or until the decision of a competent court determining the legal status of the applicants to my satisfaction has been obtained by one or other of them.

The London section on the 15th April, 1872, again applied to the Registrar for registration, who again refused on the ground that he had already refused the same application when made on the 23rd of December, 1871. Upon which this rule was obtained.

The Registrar did not appear.

Mr. H. James, Q.C. (Mr. Besley with him), showed cause on behalf of the Manchester section. It is unnecessary to go into the merits, as it is conceded that there is a *bonâ fide* dispute between the two sections of the society. The Registrar was perfectly justified in refusing to register when there were two parties before him, each claiming to represent the same society. This is precisely a case contemplated by the first and second regulations of the Secretary of State. It was contended when the rule was obtained that these regulations were *ultra vires*. That is not so. Section 13, sub-section 3, forbids the registration of a union under a name identical and similar to one already registered. That only applies to registered unions; but the regulations only carry this out. For otherwise, inasmuch as when one union has been registered under a given name no other could be registered under the same name, a well-established union might be deprived of its name when it afterwards applied to be registered. But, supposing the regulations to be *ultra vires*, the Registrar was clearly justified under the Act in refusing to register under either application; for by registering either he might in effect give them an advantage, when it might turn out that they were not entitled in any way to represent the society.

[Blackburn, J.: By registration they would *primâ facie* become entitled to the funds under section 8.]

Mr. Macdonald, in support of the rule: Sections 2 and 3 of the new Act only prevent a society, whose rules are in restraint of trade (as was held in the case of this very society in Hornby *v.* Close and Farrer *v.* Close), being illegal either in a criminal or civil sense; but it gives a trade union no standing in the Court of Chancery, and inasmuch as by section 5, sub-section 3, a trade union is not within the Companies Acts, and the deposit of the rules under the Friendly Societies Acts is rendered inoperative, a trade union, until after registration, can have no *locus standi* in a Court of Equity. Consequently, by refusing to register, the Registrar has deprived the applicants of their only means

of establishing their rights: Pare *v.* Clegg. The Registrar had no such discretion as he has claimed to exercise. By section 13, sub-section 2, he was bound to register these applicants on being satisfied that they had complied with the regulations of the Act. It is only under the regulations of the Secretary of State that he can justify his refusal. But these regulations are *ultra vires*, as they do not carry out the provisions, but in effect enact fresh provisions.

[Lush, J.: Surely these regulations are within section 13, sub-section 6, "for the purpose of carrying the Act into effect."]

They impose conditions and limitations far beyond the enactment of the statute, and consequently so far are not binding.

Blackburn, J.: There can be no doubt that this rule must be discharged. It is a great mistake to affirm that there is any decision that trade unions, or societies of that kind are, as it were, outlaws, and out of the protection of the courts of law or equity; and all that this court held was that where statutes give certain benefits to friendly societies, societies whose rules were in restraint of trade and illegal in that sense, could not claim the benefit of the statutes. However, section 3 of the Trade Union Act, 1871, 34 & 35 Vic., c. 31, seems to put an end to all doubt as to the jurisdiction of the Court of Chancery, by enacting that the purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust. What is the Registrar called upon to do under this new Act? By section 6 any seven or more members of a trade union may, by complying with the provisions of the Act with respect to registry, register the society, and call upon the Registrar to give a certificate of registration. Section 13 points out what is requisite in order to register. The effect of registration is to give to the members all the benefits of the Act; and the object of this application, no doubt, is to attain this benefit for the applicants and enable them to appoint trustees, in whom, by virtue of section 8, all the funds of the society will become vested, and so enable the applicants to deal with these funds. The effect, therefore, of registering either section of the society by the name claimed by both, would be virtually to give that section the control of the large funds belonging to the society. What is the Registrar to do when such a state of facts as the present is brought to his knowledge? It is quite clear that under the first rule made by the Secretary of State, the Registrar was justified in refusing to register either section; and neither section has or could comply with rule 2. I cannot see why these rules are not within the authority given to the Secretary of State by clause 6 of section 13. But even without these rules I think the Registrar, as soon as he found another body of persons *bonâ fide* claiming that they were entitled to be registered under the same name, and each claiming as against the other a large sum of money, and would be bound to say, "I won't alter the position of the parties, or do anything by registering one set of applicants, which may prejudice the others." I think, therefore, under the circumstances, the Registrar was quite right in refusing to register either. We cannot administer the funds in dispute; but I can see no reason why the parties should not be able to obtain relief and adjudication upon their rival claims in equity. All we decide now is that we will not compel the Registrar to register the present applicants, because we think him right not to register, so as not to alter the position of the parties.

Mellor, J. : I am of the same opinion. We should not be doing right if we compelled the Registrar to prefer one of the contending parties to the other by registering them, when two sets of persons are shown to be claiming to represent the same society. The Court of Chancery is more adapted to settle such a dispute ; and as to its power in the present instance, sections 2 and 3 of the new Act use words expressly for the purpose of removing all doubt as to the legality of a trade union, although its rules may be in restraint of trade.

Lush, J. : I am of the same opinion. I think that under the circumstances the Registrar was perfectly right in refusing to register, when he knew there were two bodies each claiming to be registered as representing the same society. I think this, irrespective of the rules of the Secretary of State ; though I cannot bring myself to think that the rules are *ultra vires* ; it certainly would be most reasonable that the Registrar should have power to enquire into the matter, where he has reason to believe the applicants are not authorised by the trade union which they claim to represent.

Rule discharged.

CASE 258.

COURT OF COMMON PLEAS. 1857. *June* 4.

IN THE MATTER OF AN ACTION OR SUIT PENDING IN THE COUNTY COURT OF LANCASHIRE, HOLDEN AT LIVERPOOL, BETWEEN F. S. HULL AND OTHERS AND JOHN McFARLANE AND OTHERS, COMMITTEE OF MANAGEMENT OF THE LIVERPOOL UNITED LEGAL FRIENDLY BURIAL SOCIETY.

The trustees of a burial society, who by the constitution of the society are not and cannot be members, ... are not "persons interested" within the meaning of the 41st section of the Friendly Societies Act, 18 & 19 Vic., c. 63, so as to enable them of their own accord to institute proceedings against the society in the County Court, for the purpose of controlling them in the proposed alteration of their rules.

The County Court having entertained such an application, this court issued a prohibition.

CASE 259.

COURT OF APPEAL.
1897.
Jan. 11.
LORD ESHER, M.R., LOPES, L.J.

PALLISER *v.* DALE AND OTHERS.

Friendly Society — Dispute — Arbitration — Friendly Societies Act, 1875, *sec.* 22, *and Friendly Societies Act*, 1895, *sec.* 10.

The disputes contemplated by section 22 of the Friendly Societies Act, 1875, must be between an actual member and the society, and where the society denies that a plaintiff is a member they cannot vouch that section.

Section 10 of the Friendly Societies Act, 1895, does not alter the law in this respect, except by extending the time for settling disputes that come within the former Act.

This was an appeal from an order of Mr. Justice Lawrence at Chambers, refusing an injunction to restrain the defendants, the trustees of the Northallerton Providential Sick Society, a friendly society registered under the Friendly Societies Acts, from excluding the plaintiff from the benefits of the society. The plaintiff had been a member of the society for 67 years, and last year he was fined one guinea by the society for having, as alleged, said to a third person that he had not been paid by the society the sum to which he was entitled on the death of his wife. The plaintiff denied that he ever said anything of the sort, or that he had not been paid the proper sum, and accordingly refused to pay the fine or apologise. The society accordingly refused to receive his subscription. By rule 5 of the society's rules "any member allowing his contributions, levies, or fines to exceed 12 weeks shall have a notice sent to him by the secretary stating how much he is in arrears, and, if he does not bring himself into compliance on the following meeting of the society, he shall cease to be a member of the society." By rule 25, "any member of this society breaking a rule thereof, or committing any offence to which no specific fine is attached, shall be fined not less than 2s. 6d. and not exceeding the sum of £1 1s., as the majority of the management committee may think fit." By rule 27, "if any dispute shall arise between a member or person claiming through a member or under the rules of the society and the society or any officer thereof, it shall be deferred to a summoned meeting of the society," to which every member of the society should be summoned. The plaintiff applied for an injunction as above, which the learned judge refused to grant upon the ground that under section 10 of the Friendly Societies Act, 1895, the dispute had to be decided in manner directed by the rules of the society, and that, therefore, he had no jurisdiction. That section provides that, "section 22 of the principal Act (Friendly Societies Act, 1875), which relates to the settlement of disputes, shall apply to every dispute between any person aggrieved who has for not more than six months ceased to be a member of a registered society, or any person claiming through such person aggrieved, and the society or an officer thereof, etc."

Mr. Scott Fox, for the plaintiff, said that "Prentice *v.* London" (L.R., 10 C.P., 679), and "Willis *v.* Wells" [1892], 2 Q.B., 225, decided that section 22 of the Friendly Societies Act, 1875, which

related to the reference of disputes to arbitration, did not apply to a dispute between a person who had been expelled from the society and the society as to whether he was still a member of the society. The dispute must be one between a member, in his character as a member, and the society, and the society could not vouch that section where they denied that the plaintiff was a member. Section 10 of the Friendly Societies Act, 1875, did not alter the law so laid down, but merely extended the time for settling disputes that came within the former Act.

Mr. Manisty, for the defendants, contended that section 10 of the Act of 1895 was passed to do away with the decision in "Prentice *v.* London" and "Willis *v.* Wells;" and brought a person in the position of the present plaintiff within section 22 of the Act of 1875. A dispute, therefore, whether the plaintiff was a member of the society now came within section 22, and the jurisdiction of the courts was ousted. The dispute was whether the plaintiff had "committed an offence" within the meaning of rule 25, and that was for the society to decide. The offence alleged was that the plaintiff had made a statement injurious to the credit and reputation of the society.

The court allowed the appeal.

The Master of the Rolls said that it had been held under the Act of 1875 that where a dispute arose between a member who had been expelled from the society and the society as to whether the society had a right to expel the member was not the subject of arbitration under section 22 of that Act. In his opinion those decisions were right. A dispute whether a person was a member or not was not a dispute between a member and the society, and could not be provided for by the rules of the society. Those decisions came to this—that if the society assumed to expel a member they could not afterwards say that he was a member and bound by the rules. Was that law altered by section 10 of the Act of 1895? The "dispute" there mentioned must be a dispute between the society and a member. That section did not alter the class of disputes to be settled, but merely extended the time for settling disputes which came within the former Act. Therefore, the "dispute" must still be one which under the former Act the society could adjudicate upon. Accordingly, this dispute did not come within section 10 of the Act of 1895, and the learned judge had jurisdiction to entertain this application. That being so, instead of sending the case back to the judge, they would now go into the merits and see whether the injunction ought to be granted. The dispute was whether the society had a right to expel the plaintiff. Even if they had a right to fine him, it did not follow that they had a right to expel him. Rule 25 was vouched in support of the contention that the society had a right to expel him. The word "offence" there must mean an offence against the society. It must be a breach of some rule of the society. The plaintiff had committed no offence. In the first place, in his opinion, the society had no right to impose a fine; and, secondly, the society had no right to expel the plaintiff. The injunction must, therefore, issue.

Lord Justice Lopes delivered judgment to the same effect.

CASE 260.

IN CHANCERY.

1853. *Nov.* 21.

HODGES *v.* WALE.

VICE-CHANCELLOR WOOD. *Friendly Societies Act* (13 & 14 *Vic.*, *cap.* 115), *secs.* 4, 13, 19, 21, 23—*Trustees*—*Jurisdiction.*

The defendant was the surviving trustee of an association for the relief of orphans and widows. A schism took place among the members, and a portion of them caused the society to be registered under the 13 & 14 Vic., c. 115. The defendant was removed from the office of trustee by a meeting acting in compliance with the regulations prescribed by the rules, and new trustees appointed. The bill was filed by the plaintiffs on behalf of themselves and all other persons interested in the trust funds to compel the defendant to transfer stock standing in his name to the new trustees, and he resisted the application on the ground, amongst others, that he was a trustee not only for the members of the registered society, but also for those subscribers of the old association who had been excluded from the new society.

The court, looking at the original rules and the rules which had been certified,

Held that the societies were identical, and that no persons claiming to be *cestui que trusts* could object to the frame of the suit, the object of placing the fund in the hands of the proper trustee being common to all; that the power given to meetings by the Friendly Societies Act, and rules of appointing new trustees from time to time included the power of removing trustees; that the Friendly Societies Act did not oust the jurisdiction of the Court of Chancery; that where a society has been registered under the Act, Clough *v.* Ratcliffe, 1 De Gex & Sm. 164, does not apply; that the court would be unwilling to consider a society for the benefit of widows and orphans illegal under the 39 Geo. III., c. 79, but would take the Registrar's certificate to be conclusive as to the society being in conformity with, and therefore entitled to the benefit of, the 21st section of the 13 & 14 Vic., c. 115.

The facts of this case sufficiently appear from the judgment.

Mr. Roll, Q.C., and Mr. Southgate for the plaintiff.

Mr. Selwyn and Mr. Turner for the defendant.

Van Sandau *v.* Moore, 1 Russ. 470; Clough *v.* Ratcliffe, 1 De Gex & Sm. 176, were cited.

Wood, V. C., said the plaintiffs alleged that they were members of a certain society called "The Widows and Orphans Fund Society." That a fund had been raised which was called "The Widows and Orphans Fund"; that such fund belonged to their society, and was held upon certain trusts, but had become vested in the names of the defendants Boyce and Wale; that the society, having formerly been unregistered, had subsequently complied with the provisions of the Friendly Societies Acts, 13 & 14 Vic., c. 115, and that in compliance with the certified rules new trustees had been appointed, and the plaintiffs were desirous of having the funds transferred to such new trustees. The defendants said that before the society was registered it became divided by a

schism, and that a portion only of the members adhered to it; that another portion, including themselves, were illegally expelled from it, and that a fragment only of the society procured itself to be registered, and that they, the defendants, had been removed simply by that portion so registered, and which did not represent the original society; that the body for whom they were trustees consisted of the original body, of whom the members of the registered society were only a portion, and that, therefore, there was no ground for transferring this fund to the alleged new trustees, as there was no privity between the parties.

Other objections were taken, viz.: That the society, as a whole, must be considered as an unregistered society, and that it could not be dealt with on the principles of Clough *v.* Radcliffe, and Van Sandau *v.* Moore. That the defendants were trustees for a large body of persons, a great number of whom supported their view of the case and objected to their removal; that, therefore, this suit was improperly framed, there being persons having interests different from those represented by the plaintiffs. That the society was an illegal society, under the 39 Geo. III., c. 79, against corresponding societies. That if this was a duly registered society, the proper remedy would be that prescribed by the 13 & 14 Vic., c. 115, and the plaintiffs must bear the additional expense; and lastly, that the defendant Wale had not been duly removed, nor new trustees duly appointed, and no decree for taking the property away from him and transferring it to the others could be made. The real material point in issue was, whether the two societies were one and the same. He (the V.C.) had gone through the original rules of 1848, and secondly, the rules certified by the barrister under the Friendly Societies Act. The question to be decided was, whether this society certified and registered was identical with the society of 1848. The first object was the relief of widows and orphans of Foresters in the London United District; and secondly, the fund was governed by the district chief ranger, and the sub-ranger, the district secretary, and three trustees. By the 25th of the original rules, representatives at quarterly meetings were to have the appointment of officers and trustees, with certain restrictions as to what representatives were expected to attend. It was admitted that quarterly meetings were still held. The 27th rule provided that the district officers should apply for enrolment of the society under the Friendly Societies Act, if practicable. Therefore, the very framers of the rules of the society contemplated that it ought to be enrolled, and no step taken with that object by the officers could be beyond their power. There was no necessity to try the question of the alleged illegality of the expulsion of a member. It was not said that the constitution of the body was broken up. Whatever had been done by the society, the existing government remained, and was capable of carrying into effect the object of the society. The rules of the enrolled society appeared to be nearly, if not quite, the same as those of 1848; and judging from them, the registered society seemed to be the identical same body as the original society. There was no suggestion that the society had been dissolved or was incapable of acting. If so, there was nothing to prevent the parties, supposing the society to be legal, from applying for its registration. It was the same continuing body—now registered, formerly unregistered. The Statute 13 & 14 Vic. c. 115, s. 4, r. 2, directed that the rules should contain the manner of appointing trustees; and the certified rule provided that three trustees should be elected from time to time by the delegates. That must imply

the power of a motion for the purpose of selecting new trustees. He (the V.C.) was satisfied on the evidence that the plaintiffs had been duly appointed trustees of the fund. But it was said that a Court of Equity would refuse to interfere with intestine squabbles and disputes of such a society. If it had not been registered, he should have had little difficulty, but it was now protected by the Act. The question was, who was the trustee of the fund—not whether there were intestine squabbles? With reference to the objection to the form of the suit, it must be assumed that the defendants were *cestui que trusts*. The governing body still remained. He was asked to take the fund from a person properly removed, and to place it in the hands of a trustee properly appointed by the governing body. They all, being *cestui que trusts*, have a common interest in the fund being placed in the proper custody. The next objection was under the Act of 1793. He should have felt hesitation in applying that Act to a body whose sole object was to relieve widows and orphans, merely because they had a "court" and a "district," and were associated with a body called Foresters. If so, the methodist body and numerous associations for scientific and other purposes might fall within the words of the Act. But the legislature had left it to the barrister to approve of the rules, and that having been done, the society could not be held for this purpose to be illegal. The next objection was, that this remedy in equity was improper, as the Friendly Societies Act gave a less expensive remedy. But that Act in several sections contemplates suits in equity, and the remedy there given to obtain a transfer of stock was very inadequate. It was enough to say that there was nothing in it to oust the jurisdiction of this court. The last objection had been already considered. In making a decree for the transfer of the fund, the decision would in no way affect the suspension of the defendant. The rights of the *cestuis que trusts* would have to be determined according to whatever the rules might be. Finding a society in existence which had power to appoint trustees, and finding that trustees had been duly appointed, the only order that it would be necessary for the court to make would be a direction that the funds of the society be transferred to the persons properly appointed; and the defendant Wale having occasioned the difficulty must pay the costs.

CASE 261.

CHANCERY DIVISION. 1887. *June* 17. CHITTY, J.

TIPLADY *v.* ROYAL LIVER FRIENDLY SOCIETY.

Friendly Society—Dispute with Members—Removal of Action from County Court to High Court—Jurisdiction.

This was an action commenced in the County Court at Liverpool by a member of the above society against the committee of management of the society for an injunction to restrain the defendants from making what were alleged to be unauthorised payments and from acting as such committee. On February 11th, 1887, Mr. Justice Chitty, in another and

similar action to the present, brought against the society by some of its members, made absolute a rule *nisi* obtained by the society for a writ of certiorari transferring the proceedings to the High Court of Justice, it being admitted by the plaintiffs in that action that if the jurisdiction of the High Court was not ousted by the Friendly Societies Act, 1875, s. 22, sub-s. *(d)*, and s. 30, sub-s. 10, the High Court was the proper tribunal for the trial of the action, and his lordship holding that the enactments were of a permissive character, and did not exclude the jurisdiction of the High Court. That action had been ultimately dismissed for want of prosecution, and, the society having obtained a rule *nisi* for the removal of the present action into the High Court,

Mr. C. E. E. Jenkins, on behalf of the plaintiff, submitted that on the certiorari proceeding in the former action the court had not had placed before it the possible effect of holding that section 22, sub-section *(d)* of the Act was permissive. That enactment provided that where the rules of a friendly society contained no direction as to disputes, or where no decision was made on a dispute within 40 days after the application to the society for a reference under its rules the member or person aggrieved might apply to the County Court. He submitted that if such an enactment was to be deemed to be permissive, a friendly society, whenever an application was made under its rules by a member for reference, might delay giving a reference until the aggrieved member found his way to the County Court, when the society would promptly apply for and obtain a trial of the dispute in the High Court. The result was that an Act of Parliament, which was intended to confer on members of friendly societies the advantage of a special procedure for the cheap and expeditious determination of disputes, contained a back door, which permitted the governing body of the society to drag matters into the High Court by declining to comply with its own rules. He, therefore, submitted that the proper construction to be put upon the Act was that the County Court was, under section 22, sub-section *(d)*, the only tribunal intended by the legislature, subject possibly to an appeal under section 22, sub-section *(e)*.

Mr. Romer, Q.C., and Mr. Rutherford appeared for the society.

Mr. Justice Chitty said that the point taken was ingenious, but it was in substance covered by his decision in the former action. The Friendly Societies Act, 1875, section 22, sub-section *(d)*, conferred a jurisdiction on the County Courts, but did not take away the jurisdiction of the High Court. If a friendly society were to endeavour, so to speak, to creep out of its rules by the means which the learned counsel for the plaintiff had suggested, and were to endeavour by means of wilful procrastination to bring the aggrieved member within the operative part of section 22, sub-section *(d)*, the High Court would no doubt, decline to entertain the application by the society to remove the action from the County Court. The present case was a proper one to be tried in the High Court. He, therefore, made the rule for a certiorari absolute, costs to be costs in the action.

CASE 262.

LAMBETH POLICE COURT.

1897. *March* 22.

REGINA *v.* DORIZZI.

Friendly Societies Act, 1896 (59 & 60 *Vic.*, *cap.* 25), *sec.* 54—*Officer—Failure to give Security—Conviction.*

John Dorizzi was summoned for entering upon the execution of his duties as treasurer of the Surrey Reformed Benefit Society without first obtaining security. Mr. R. W. Humphreys appeared in support of the summons, and Mr. Philcox defended. The summons was issued at the instance of Mr. A. W. Starkey, the former treasurer of the society, and the proceedings were instituted under section 54 of the Friendly Societies Act, 1896, which came into operation on the 1st of January last. Evidence was given showing that upon the resignation of the late treasurer on the 29th December, the defendant was appointed to the office, but did not provide the necessary security until about seven weeks later. For the defence, Mr. Philcox admitted that a technical offence had been committed, but said the obtaining of a bond from the Guarantee Society necessarily took some time. The rules of the society required that sick pay should be paid out weekly to sick members, and it was necessary that someone should undertake the work. Mr. Hopkins ordered the defendant to pay a nominal penalty of 5s., but declined to allow any costs.

REVIEW OF THE

FRIENDLY SOCIETIES ACT, 1896,

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THE SOLICITORS' JOURNAL.

Legislation on the subject of friendly societies dates back rather more than a hundred years, and in that time there have been several measures of consolidation. The same task has again been undertaken in the Friendly Societies Act, 1896, and this statute presents the law in a form much superior in arrangement and convenience to that of the earlier Acts. The first Act, 33 Geo. III., c. 54, was entitled "an Act for the encouragement and relief of friendly societies," and the preamble recited that the protection and encouragement of such societies was likely to be attended with very beneficial effects by promoting the happiness of individuals, and at the same time diminishing the public burdens. The objects of the societies were stated to be the raising, by voluntary subscriptions, funds for the mutual relief and maintenance of the members in sickness, old age, and infirmity. The Act declared it lawful for societies of this nature to be formed, and made provision for the rules to be approved by the justices in quarter sessions, and for the treasurers and trustees to give bonds to the clerk of the peace. Societies also were allowed priority in respect of their claims against insolvent officers, and they had the peculiar right of suing defaulting officers in Chancery without paying court fees or fees to counsel.

After some intermediate legislation the matter was taken up again in 1819 by 59 Geo. III., c. 128, which recited that the habitual reliance of poor persons upon parochial relief, rather than upon their own industry, tended to the moral deterioration of the people, and to the accumulation of heavy burdens upon parishes; that by the contributions of the savings of many persons to one common fund, the most effectual provision might be made for the casualties affecting all the contributors; and that it was therefore desirable to afford further facilities and additional security to persons who might be willing to unite in appropriating small sums from time to time to the formation of such a common fund. The Act continued the authority of quarter sessions with respect to the confirmation of rules, and the same authority was extended to the confirmation of the tables of the society, but the justices were not to confirm any tables of payments or benefits, or any rules dependent on the calculation thereof, unless the tables had been approved by two professional actuaries or persons skilled in calculation. The Act contained provisions with regard to the vesting of property and the investment of funds, and it forbade the dissolution of the society without the consent of the trustees.

In 1829 the law relating to friendly societies was consolidated and amended by the statute 10 Geo. IV., c. 56, and some important changes were introduced. The duty of considering the rules was transferred to a barrister appointed for the purpose, and the rules when certified by him were confirmed as of course by the justices. The justices, however, had to decide that the tables of payments to be made to the members and of benefits to be received by them might be adopted with safety to all parties concerned. The summary jurisdiction over defaulting officers, which had been formerly vested in the Court of Chancery, was transferred to the justices, and provision was made for vesting property in the absence, etc., of trustees and for payment of small sums due to the estates of deceased members without administration. Societies might be dissolved with the consent of five-sixths in value of the members, and minors were permitted to be members, enjoying the privileges and being under the obligations of adults. Provision was also made for the issue to the members of an annual statement of the funds of the society. In 1834 the practice with regard to confirming the rules was again altered, and under 4 & 5 Wm. IV., c. 40, the barrister had to certify that the rules were calculated to carry into effect the intentions of the parties framing them, and were in accordance with the law. On this certificate they were forthwith confirmed by the justices and filed with the clerk of the peace. Further changes were made in 1846 by 9 & 10 Vic. c. 27. The duties of the justices in connection with the rules and tables were altogether abolished, the barrister became the registrar of friendly societies—Mr. John Tidd Pratt was the first incumbent of the office—and the rules were filed with him. In other ways also his control over friendly societies was largely increased. He was authorised to transfer property on behalf of absent or incapable trustees, to settle disputes, and to require the production of documents and administer oaths. But in lieu of the former provision for the approval of tables by the justices, it was provided that the registrar should not certify rules for the purpose of securing any benefit depending on the laws of sickness or mortality unless the society had adopted a table certified by a duly qualified actuary. The same Act largely extended the objects for which societies might be formed.

In 1850 the law was again consolidated and amended. The Acts of 1829, 1834, and 1846 were repealed, and the statute 13 & 14 Vic. c. 115 took their place. This Act was limited to societies not assuring above £100 in case of death or other contingency, or an annuity of £30, or 20s. per week in sickness, and a distinction was now drawn between certified societies, whose tables had been certified by an actuary as just described, and other societies, which were known simply as registered societies. Certified societies might pay sums up to £50 on the death of members without administration. The Act was intended as an experiment, and it was to be in force for one year only, but it was continued from year to year till 1855, when the law was once more consolidated and amended by 18 & 19 Vic. c. 63. The distinction which it had been attempted to make between certified and other societies was dropped, save in the case of societies granting annuities which still had to use a table certified by an actuary. The limits of £200 for insurances and £30 for annuities were preserved—the latter was in 1875 raised to £50—and the power of paying up to £50 without administration was made general. Various amendments were introduced, and the new statute re enacted the provisions as to the jurisdiction of the registrar, as to the investment of funds and control of property, and as to proceedings against defaulting officers.

Changes with respect to societies permitted to be registered under the Act of 1855 were made by Acts passed in 1858, 1860, and 1866, and between

1870 and 1874 an exhaustive inquiry into the whole operation of friendly societies was made by a Royal Commission. As the result of this inquiry the Friendly Societies Act, 1875, was passed, and the law was again consolidated and amended. Until the present year this has been the principal statute, but various amendments have been effected by later Acts. Those contained in the Friendly Societies Acts of 1876, 1879, 1882, and 1885, were repealed and re-enacted by the Act of 1887, and this last Act attempted a modified kind of consolidation by providing that copies of the principal Act might be printed by the Queen's printers with the alterations effected by the Act of 1887. But this is an inconvenient substitute for real consolidation. The copies of the Act of 1875 which are ordinarily available for reference are those printed at the time of its passing, and it is very confusing to have to introduce into them numerous modifications. In addition to the changes in the law incorporated in the Act of 1887, a provision as to collecting societies was contained in the Friendly Societies Act, 1889; a provision as to stating a special case in the Act of 1893; and provision as to nomination in the Provident Nominations and Small Intestacies Act, 1883. Moreover, important changes in the law were effected by the Friendly Societies Act, 1893.

When it is remembered that the societies regulated by this legislation are numbered by thousands, and that the funds at their disposal amount to many millions of pounds, it is evident that the time had come for a new measure of consolidation, and this task has been very efficiently accomplished in the Friendly Societies Act, 1896. The Act does not profess to be more than a consolidating Act, and, so far as we have noticed in the course of a somewhat careful comparison of its provisions with those of the repealed Acts, it does not effect any change in the law. The changes in arrangement and in drafting, however, are very numerous, and considerable improvements have been made. The process of cutting up long sections into separate paragraphs, which rendered the Act of 1875 very much easier to use than the Act of 1855, has been carried still further, and many sections have now been similarly divided into distinct sections. In consequence the present Act contains 109 sections as compared with the forty-one sections of the Act of 1875.

It would be beyond the scope of the present article to discuss in any detail the provisions of the law as it is now enunciated. The jurisdiction of the registrar established by the Act of 1846 is continued, and sections 1 to 7 contain the provisions regulating the registry office. Sections 8 to 16 define the societies which may be registered and the conditions of registry. Under section 16 societies which grant annuities are still required to have their tables certified by a duly qualified actuary. The practice of establishing societies with branches, such as the Manchester Unity of Oddfellows, with its branches scattered all over the country, introduces a good deal of complication into the law. A branch, according to the definition in section 106, means any number of the members of a society under the control of a central body having a separate fund, administered by themselves, or by a committee or officers appointed by themselves, *and bound to contribute to a fund under the control of a central body*. At first sight the words in italics appear to change the definition as contained in section 4 of the Act of 1875, but in fact they only incorporate the effect of section 29 (6) of that Act, under which societies not bound to contribute to a central fund are required to be treated as separate societies, although in other respects on the footing of branches. This latter section is now rendered unnecessary by the addition to the definition, and what seems *primâ facie* to be a change in the

law is really a good example of the skill with which the new Act has been drafted. The provisions with respect to branches are contained in sections 17 to 22.

Most of the features which marked the earlier Friendly Societies Acts are still preserved. Such are the provisions allowing societies a preferential claim in the bankruptcy of their officers (section 35), permitting the membership of minors (section 36)—the law in this respect was remodelled by the Act of 1895—conferring on magistrates summary jurisdiction (section 92), and allowing dissolution to take place with the consent of five-sixths in value of the members (section 78). A curious instance, however, in which such dissolution was held to be ineffectual without the consent of the committee occurred recently in *Rudd* v. *James* (1896, 2 Ch. 554). Other provisions, such as those limiting the amount of insurances and annuities (section 41), enabling the registrar on the application of a specified number of members to appoint inspectors or call a special meeting (section 76), and enabling societies to transform themselves into companies (section 71), are more recent. But the whole Act is a striking example of the manner in which the law has grown so as to suit the development of its subject-matter. The Act of 1875 contained, in section 30, special provisions with respect to collecting societies—that is, societies receiving contributions by collectors at a greater distance than ten miles from the registered office. These are now placed in a separate Act under the title of the Collecting Societies and Industrial Assurance Companies Act, 1896.

FRIENDLY SOCIETIES ACT, 1896.

[59 & 60 VICT. CH. 25.]

ARRANGEMENT OF SECTIONS.

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CHAPTER 25.

An Act to consolidate the Law relating to Friendly and other Societies. A.D. 18
[7th August, 1896.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

The Registry Office.

1.—(1.) There shall continue to be a chief registrar of friendly societies (in this Act called "the chief registrar"), and one or more assistant registrars of friendly societies for England (in this Act called "assistant registrars for England"), and the chief registrar and assistant registrars for England shall continue to constitute the central office of the registry of friendly societies. The regi office.

(2.) There shall continue to be an assistant registrar of friendly societies for Scotland (in this Act called "assistant registrar for Scotland"), and an assistant registrar of friendly societies for Ireland (in this Act called "assistant registrar for Ireland").

(3.) Every chief registrar and assistant registrar shall be appointed by and shall hold his office during the pleasure of the Treasury.

(4.) The chief registrar shall be a barrister of not less than twelve years standing, and one at least of the assistant registrars for England, and the assistant registrar for Ireland, shall be a barrister or solicitor of not less than seven years standing, and the assistant registrar for Scotland shall be an advocate, writer to the signet, or solicitor of not less than seven years standing.

(5.) The central office may, with the approval of the Treasury, have attached to it such assistants skilled in the business of an actuary and an accountant as may be required for discharging the duties imposed on the office by this Act.

2.—(1.) The central office shall continue to exercise the functions and powers formerly vested— Functio of the central office.

(*a*) as respects trade unions, in the registrar of friendly societies in England; and

(*b*) as respects building societies, in the registrar of building societies in England; and

(*c*) as respects unincorporated benefit building societies, loan societies, and societies instituted for purposes of science literature or the fine arts, in the barristers appointed to certify the rules of savings banks or friendly societies,

and shall be entitled to receive all fees payable to those registrars and barristers; and all enactments relating to those registrars and barristers shall, so far as respects trade unions and such societies as aforesaid, be construed as applying to the central office.

(2.) The central office shall, with the approval of the Treasury—

(*a*) prepare and cause to be circulated, for the use of societies, model forms of accounts, balance sheets, and valuations; and

(*b*) collect from the returns under this Act and from other sources, and publish and circulate, either generally or in any particular district, or otherwise make known, such information on the subject of the statistics of life and sickness, and the application thereof to the business of friendly societies, and such particulars of their returns and valuations, and such other information useful to the members of or to persons interested in societies registered or capable of being registered under this Act, as the chief registrar may think fit; and

(*c*) cause to be constructed and published tables for the payment of sums of money on death, in sickness, or old age, or on any other contingency forming the subject of an assurance authorised under this Act which may appear to be calculable: Provided that the adoption of the tables by a society shall be optional.

Functions of assistant registrars generally.

3.—(1.) The assistant registrars shall, except as in this Act provided, be subordinate to the chief registrar.

(2.) They shall, within the parts of the United Kingdom for which they are respectively appointed, exercise all functions and powers by this Act given to the registrar, and may also by the written authority of the chief registrar, exercise such of the functions and powers by this Act given to the chief registrar as he may delegate to them.

Functions of assistant registrars for Scotland and Ireland.

4.—(1.) Subject to any regulations to be made under this Act, the assistant registrars for Scotland and Ireland respectively shall continue to exercise the functions and powers formerly vested—

(*a*) as respects trade unions, in the registrars of friendly societies in Scotland and Ireland; and

(*b*) as respects building societies, in the registrars of building societies in Scotland and Ireland; and

(*c*) as respects benefit building societies and societies instituted for purposes of science literature or the fine arts, in Scotland, in the Lord Advocate or his deputies appointed to certify the rules of any such societies, and, in Ireland, in any barristers appointed for the like purpose;

and shall be entitled to receive all fees payable to those registrars, the Lord Advocate or his deputies, and those barristers respectively; and all provisions in any Acts of Parliament relating to those persons respectively shall be construed as applying to those assistant registrars.

(2.) Subject as aforesaid, the assistant registrars for Scotland and Ireland shall—

(*a*) send to the central office copies of all such documents registered or recorded by them as the chief registrar may direct: and

(*b*) record such documents and matters as may be sent to them for record from the central office, and such other documents and matters as are in this Act required to be recorded: and

(*c*) circulate and publish, or transmit to or from societies registered in Scotland or Ireland respectively, from or to the central office, such

information and documents relating to the purposes of this Act as the chief registrar may, with the approval of the Treasury, direct: and

(*d*) report their proceedings to the chief registrar as he may direct.

(3.) An assistant registrar for Scotland or Ireland shall not refuse to record any rules or amendments of rules which have been registered by the central office.

Salaries expense

5. The Treasury shall, out of money to be provided by Parliament, pay to the chief and assistant registrars such salaries or other remunerations, and such sums of money for defraying the expenses of office rent, salaries of assistants, clerks, and servants, remuneration for actuaries, accountants, and inspectors, computation of tables, publication of documents, diffusion of information, expenses of prosecutions, travelling expenses and other allowances of the chief or any assistant registrar, and other expenses which may be incurred for carrying out the purposes of this Act, as the Treasury may allow.

Report the chie registra

6. The chief registrar shall every year make a report of his proceedings and of those of the assistant registrars, and of the principal matters transacted by him and them and of the valuations returned to or caused to be made by the registrar during the year preceding, and that report shall be laid before Parliament.

Deposit docume

7. All documents by this Act required to be sent to the registrar shall be deposited with the rules of the societies to which the documents respectively relate, and shall be registered or recorded by the registrar, with such observations thereon, if any, as the chief registrar may direct.

Registry of Societies.

8. The following societies may be registered under this Act:—

Societi which may be registe

(1.) Societies (in this Act called friendly societies) for the purpose of providing by voluntary subscriptions of the members thereof, with or without the aid of donations, for—

(*a*) the relief or maintenance of the members, their husbands, wives, children, fathers, mothers, brothers, or sisters, nephews or nieces, or wards being orphans, during sickness or other infirmity, whether bodily or mental, in old age (which shall mean any age after fifty) or in widowhood, or for the relief or maintenance of the orphan children of members during minority; or

(*b*) insuring money to be paid on the birth of a member's child, or on the death of a member, or for the funeral expenses of the husband, wife, or child of a member, or of the widow of a deceased member, or, as respects persons of the Jewish persuasion, for the payment of a sum of money during the period of confined mourning; or

(*c*) the relief or maintenance of the members when on travel in search of employment, or when in distressed circumstances, or in case of shipwreck, or loss or damage of or to boats or nets; or

(*d*) the endowment of members or nominees of members at any age; or

(*e*) the insurance against fire, to any amount not exceeding fifteen pounds, of the tools or implements of the trade or calling of the members.

Provided that a friendly society which contracts with any person for the assurance of an annuity exceeding fifty pounds per annum, or of a gross sum exceeding two hundred pounds, shall not be registered under this Act:

(2.) Societies (in this Act called cattle insurance societies) for the purpose of insurance to any amount against loss of neat cattle, sheep, lambs, swine, horses, and other animals by death, from disease or otherwise:

(3.) Societies (in this Act called benevolent societies) for any benevolent or charitable purpose:

(4.) Societies (in this Act called working-men's clubs) for purposes of social intercourse, mutual helpfulness, mental and moral improvement, and rational recreation:

(5.) Societies (in this Act called specially authorised societies) for any purpose which the Treasury may authorise as a purpose to which the provisions of this Act, or such of them as are specified in the authority, ought to be extended.

Provided that where any provisions of this Act are so specified, those provisions only shall be so extended.

Conditions of registration.

9.—(1.) A society shall not be registered under this Act unless it consists of seven persons at least.

(2.) For the purpose of registry there shall be sent to the registrar an application to register the society, signed by seven members and the secretary, and copies of the rules, together with a list of the names of the secretary and of every trustee or other officer intended to be authorised to sue and be sued on behalf of the society.

(3.) The rules of the society so sent shall, according to the class in which the society is to be registered, contain provisions in respect of the several matters mentioned in the First Schedule to this Act.

(4.) If the list is signed by the secretary and every trustee and other officer named therein, it shall on the registry of the society be evidence that the persons so named have been duly appointed.

Name of Society.

10. A society shall not be registered under a name identical with that under which any other existing society is registered, or so nearly resembling that name as to be likely, or in any name likely, in the opinion of the registrar, to deceive the members or the public as to its nature or its identity.

Acknowledgment of registry.

11. The registrar, on being satisfied that a society has complied with the provisions of this Act as to registry, shall issue to that society an acknowledgment of registry specifying the designation of the society according to the classification set forth in this Act, and this acknowledgment shall be conclusive evidence that the society therein mentioned is duly registered, unless it is proved that the registry of the society has been suspended or cancelled.

Appeals from refusal to register.

12.—(1.) From a refusal to register a society an appeal shall lie as follows:—

(*a*) if the assistant registrar for Scotland or for Ireland refuses to register, the society may appeal to the chief registrar, and if he refuses, to the Court of Session in Scotland, or to the High Court in Ireland.

(*b*) if the central office refuse, the society may appeal to the High Court in England.

(2.) If the refusal to register is overruled on appeal, the registrar shall give an acknowledgment of registry to the society.

Regist amend ments rules.

13.—(1.) An amendment of a rule made by a registered society shall not be valid until the amendment has been registered under this Act, for which purpose copies of the amendment, signed by three members and the secretary, shall be sent to the registrar.

(2.) The registrar shall, on being satisfied that any amendment of a rule is not contrary to the provisions of this Act, issue to the society an acknowledgment of registry of the amendment and that acknowledgment shall be conclusive evidence that the amendment is duly registered.

(3.) The provisions of this Act as to appeals from a refusal to register a society shall apply to a refusal to register an amendment of a rule.

Regist societi carryi busine more t one pa the Ur Kingd

14.—(1.) A society carrying or intending to carry on business in more than one part of the United Kingdom shall be registered in the part in which its registered office is situate; but the rules and registered amendments of rules of any such society shall be recorded by the registrars of the other parts, and for that purpose copies of the rules and amendments shall be sent to those registrars.

(2.) Until the rules are so recorded the society shall not be entitled to any of the privileges of this Act in the part of the United Kingdom in which the rules have not been recorded and until the amendments of rules are recorded they shall not take effect in that part.

Regist dividir societi

15. A society (other than a benevolent society or working-men's club) shall not be disentitled to registry by reason of any rule for or practice of dividing any part of the funds thereof if the rules of the society contain distinct provision for meeting all claims upon the society existing at the time of division before any such division takes place.

Regist societi assuri annuit

16. A society assuring a certain annuity shall not be entitled to registry, unless the tables of contributions for the assurance, certified by the actuary to the National Debt Commissioners, or by some actuary approved by the Treasury, who has exercised the profession of actuary for at least five years, are sent to the registrar with the application for registry.

Societies with Branches.

Regist societi with branch

17.—(1.) Where a society has branches, the application for registry shall be accompanied with—

(*a*) a list of all the branches, and notice of the place where the registered office of each branch is situate; and

(*b*) if any branch is to have trustees or officers authorised to sue and be sued on its behalf, other than the trustees or officers authorised to sue and be sued on behalf of the society, a list of the names of all such trustees or officers, distinguishing the branches for which they are authorised to sue and be sued; and

(*c*) if the rules of all the branches (in this Act called branch rules) are or are intended to be identical, a statement to that effect, and copies of those rules; and

(*d*) if the branch rules are not or are not intended to be identical, a statement to that effect, and copies of all branch rules.

(2.) A society having a fund under the control of a central body to which every branch is bound to contribute may be registered as a single society, and where any such society has branches in more than one part of the United Kingdom the provision of this Act as to the registry of societies doing business in more than one such part shall apply to that society.

Establishment of new branches.

18.—(1.) There shall be sent under the hand of the secretary of a registered society to the registrar—

(*a*) notice of the establishment of every new branch of the society; and

(*b*) notice of the place where the registered office of the branch is situate; and

(*c*) if the branch is to have trustees or officers authorised to sue and be sued on its behalf other than the trustees or officers authorised to sue and be sued on behalf of the society, a list of the names of such trustees or officers; and

(*d*) a statement whether or not the rules of the branch are identical with those of the other branches of the society, and, if not so, a copy of the rules of the branch.

(2.) Where the rules of the new branch are not identical with those of the other branches of the society, the society shall not be entitled to any of the privileges of this Act in respect of that branch until that branch has been registered in the part of the United Kingdom in which the registered office of the branch is to be situate.

Application of previous provisions to branches.

19. The provisions of this Act as to—

(*a*) The acknowledgment of registry of societies and amendments of rules; and

(*b*) appeals from refusals to register societies and amendments of rules and the result thereof; and

(*c*) the registry of amendments of rules; and

(*d*) evidence of registry and of the appointment of trustees and officers

shall apply to branches and amendments of branch rules.

Requisites for registry of branches as societies.

20.—(1.) A body which has been registered as a branch of a society shall not be registered as a society except on production to the registrar of a certificate under the hand of the chief secretary or other principal officer of the society of which it was a branch, that the body has wholly seceded or has been expelled from the society.

(2.) An appeal shall lie from the refusal of the chief secretary or other principal officer of the society, or his omission after three months from the receipt of a request in writing made on behalf of the body to grant a certificate, to the High Court in England or Ireland or to the Court of Session in Scotland.

Name of seceding or expelled branch.

21. A body which, having been a branch of a society, has wholly seceded or been expelled from that society shall not thereafter use the name of that society or any name implying that it is a branch thereof, or the number by which it was designated as such branch.

22.—(1.) A registered society or branch may contribute to the funds and take part by delegates or otherwise in the government of any other registered society or registered branch of a society, as provided in the rules of that first-named society or branch, without becoming a branch under this Act of that other society or branch. Contributions from one society to another.

(2.) This section shall in respect of contributing to the funds and taking part in the government of a medical society, that is to say, a society for the purpose of relief in sickness by providing medical attendance and medicine, extend to any registered trade union or branch of a registered trade union.

(3.) A registered society or trade union or branch shall not withdraw from contributing to the funds of any such medical society except on three months notice to the society and on payment of all contributions accrued or accruing due to the date of the expiration of the notice.

Consequences of Registry.

23. Save as provided by section thirty-one of this Act, the subscription of a person being or having been a member of a registered society or branch shall not be recoverable at law. Subscription not recoverable at law.

24.—(1.) Every registered society and branch shall have a registered office to which all communications and notices may be addressed, and shall send to the registrar notice of the situation of that office, and of every change therein. Registered office.

(2.) In the case of a branch the notice shall be sent to the registrar through an officer appointed in that behalf by the society of which the branch forms part.

25.—(1.) Every registered society and branch shall have one or more trustees. Appointment of trustees.

(2.) The trustees shall be appointed at a meeting of the society or branch, and by a resolution of a majority of the members present and entitled to vote thereat.

(3.) The society or branch shall send to the registrar a copy of every resolution appointing a trustee, signed by the trustee so appointed, and by the secretary of the society or branch.

(4.) The same person shall not be secretary or treasurer of a registered society or branch, and a trustee of that society or branch.

(5.) In the case of a branch the copy of the resolution shall be sent to the registrar through an officer appointed in that behalf by the society of which the branch forms part.

26.—(1.) Every registered society and branch shall once at least in every year submit its accounts for audit either to one of the public auditors appointed as in this Act mentioned, or to two or more persons appointed as the rules of the society or branch provide. Audit.

(2.) The auditors shall have access to all the books and accounts of the society or branch, and shall examine the annual return mentioned in this Act, and verify the annual return with the accounts and vouchers relating thereto, and shall either sign the annual return as found by them to be correct, duly vouched, and in accordance with law, or specially report to the society or branch in what respects they find it incorrect, unvouched, or not in accordance with law.

Annual returns.

27.—(1.) Every registered society and branch shall once in every year, not later than the thirty-first day of May, send to the registrar a return (in this Act called the annual return) of the receipts and expenditure, funds, and effects of the society or branch as audited.

(2.) The annual return must—

(*a*) show separately the expenditure in respect of the several objects of the society or branch; and

(*b*) be made out to the thirty-first day of December then last inclusively; and

(*c*) state whether the audit has been conducted by a public auditor appointed as by this Act provided, and by whom, and, if by persons other than a public auditor, state the name, address, and calling or profession of every such person, and the manner in which, and the authority under which, he is appointed.

(3.) The society or branch shall, together with the annual return, send a copy of any special report of the auditors.

(4.) In the case of a branch the annual return shall be sent to the registrar through an officer appointed in that behalf by the society of which the branch forms part.

Quinquennial valuation.

28.—(1.) Every registered society and branch shall, except as in this section provided, once at least in every five years either—

(*a*) cause its assets and liabilities to be valued by a valuer to be appointed by the society or branch and send to the registrar a report on the condition of the society or branch; or

(*b*) send to the registrar a return of the benefits assured and contributions receivable from all the members of the society or branch, and of all its funds and effects, debts and credits, accompanied by such evidence in support thereof as the chief registrar prescribes.

(2.) If the society or branch sends to the registrar such report as aforesaid, the report must—

(*a*) be signed by the valuer; and

(*b*) state the address and calling or profession of the valuer; and

(*c*) contain an abstract to be made by the valuer of the results of his valuation, together with a statement containing such information with respect to the benefits assured and the contributions receivable by the society or branch, and of its funds and effects, debts and credits, as the registrar may require.

(3.) If the society or branch sends to the registrar such return as aforesaid he shall cause the assets and liabilities of the society or branch to be valued and reported on by some actuary, and shall send to the society or branch a copy of the report and an abstract of the results of the valuation.

(4.) Provided that this section shall not apply to—

(*a*) a benevolent society, working-men's club, cattle insurance society or branch thereof; or

(*b*) a specially authorised society or branch unless it is so directed in the authority for registering that society or branch.

(5.) Provided also that the chief registrar may, with the approval of the Treasury, dispense with the provisions of this section in respect of societies

or branches to whose purposes or to the nature of whose operations he may deem those provisions inapplicable.

Copy of balance sheet.

29. Every registered society and branch shall keep a copy of the last annual balance sheet, and of the last quinquennial valuation, together with any special report of the auditors, always hung up in a conspicuous place at the registered office of the society or branch.

Public auditors valuers

30.—(1.) For the purpose of audits and valuations to be made under this Act the Treasury may appoint public auditors and valuers and may determine the rates of remuneration to be paid by societies and branches for the services of those auditors and valuers; but the employment of those auditors and valuers shall not be compulsory.

(2.) The Treasury may out of money to be provided by Parliament pay to the public auditors and valuers such remuneration (if any) as the Treasury may allow.

Regist cattle insura and o societ

31.—(1.) The rules of a registered cattle insurance society or branch, and of such specially authorised societies or branches thereof as the Treasury may allow to take the benefit of this section, shall bind the society or branch and the members thereof, and all persons claiming through them respectively, to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the rules contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to the rules subject to the provisions of this Act.

(2.) All sums of money payable by a member to such society or branch as aforesaid shall be deemed to be a debt due from the member to the society or branch, and shall be recoverable as such in the county court of the district in which the member resides.

Privileges of Registered Societies.

Excep of so from respo Socie Acts, 39 Ge c. 79. 57 Ge c. 19.

32.—(1.) A registered society or branch or a meeting of a registered society or branch shall not be affected by any of the provisions of the Unlawful Societies Act, 1799, or of the Seditious Meetings Act, 1817, if in the society or branch or at the meeting no business is transacted other than that which directly and immediately relates to the objects of the society or branch as declared in the rules thereof; but the society or branch, and all officers thereof shall, on request in writing by two justices of the peace, give to such justices full information of the nature, objects, proceedings, and practices of the society or branch.

(2.) If the society or branch when so required fails to give such information as aforesaid, the provisions of those Acts shall, so far as applicable, be in force in respect of the society or branch.

Exem from duty.

33. Stamp duty shall not be chargeable upon any of the following documents:—

(*a*) Draft or order or receipt given by or to a registered society or branch in respect of money payable by virtue of its rules or of this Act:

(*b*) Letter or power of attorney granted by any person as trustee for the transfer of any money of a registered society or branch invested in his name in the public funds:

(*c*) Bond given to or on account of a registered society or branch or by the treasurer or other officer thereof:

(*d*) Policy of insurance or appointment or revocation of appointment of agent or other document required or authorised by this Act or by the rules of a registered society or branch.

Transfer of stock standing in name of trustee.

34.—(1.) In any of the following cases, namely:—

(i.) where a person being or having been a trustee of a registered society or branch, and whether appointed before or after the registry thereof, in whose name any stock belonging to that society or branch transferable at the Bank of England or Bank of Ireland is standing, either jointly with another or others, or solely—

(*a*) is absent from the British Islands; or

(*b*) becomes bankrupt or files any petition or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors; or

(*c*) becomes lunatic or is dead; or

(*d*) has been removed from his office of trustee; or

(ii.) if it is unknown whether such person is living or dead,

the chief registrar may, on application in writing from the secretary and three members of the society or branch, and on proof satisfactory to him, direct the transfer of the stock into the names of any other persons as trustees for the society or branch.

(2.) The transfer shall be made by the surviving or continuing trustees, or if there is no such trustee, or if the trustees refuse or are unable to make the transfer, and the chief registrar so directs, then by the Accountant General or Deputy or Assistant Accountant General of the Bank of England or Bank of Ireland, as the case may be.

(3.) The Bank of England and the Bank of Ireland are hereby indemnified for anything done by them or any of their officers in pursuance of this section against any claim or demand of any person injuriously affected thereby.

Priority on death, bankruptcy, &c. of officer.

35.—(1.) In the following cases, namely—

(*a*) upon the death or bankruptcy of any officer of a registered society or branch having in his possession by virtue of his office any money or property belonging to the society or branch; or

(*b*) if any execution, attachment, or other process is issued, or action or diligence raised against any such officer or against his property,

his heirs, executors, or administrators, or trustee in bankruptcy, or the sheriff or other person executing the process, or the party using the action or diligence respectively shall, upon demand in writing of the trustees of the society or branch, or of any two of them, or of any person authorised by the society or branch, or by the committee thereof, to make the demand, pay the money, and deliver over the property to the trustees of the society or branch in preference to any other debt or claim against the estate of the officer.

(2.) In this section the expression "bankruptcy" shall include liquidation of a debtor's affairs by arrangement in England, cessio bonorum of a debtor in Scotland, and a petition for arrangement with creditors in Ireland; and the expression "trustee in bankruptcy" shall include a judicial factor in Scotland, and an assignee in Ireland.

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36.—(1.) The rules of a registered society or branch may provide for the admission of a person under twenty-one years of age but above one year of age as a member.

(2.) Any such member may, if he is over sixteen years of age by himself, and if he is under that age by his parent or guardian, execute all instruments and give all acquittances necessary to be executed or given under the rules, but shall not be a member of the committee, or a trustee, manager, or treasurer of the society or branch.

Subsc
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37. A registered society or branch may subscribe out of its funds to any hospital, infirmary, charitable or provident institution, any annual or other sum which may be necessary to secure to members of the society or branch and their families the benefits of the hospital, infirmary, or other institution, according to its rules.

Rights of Members.

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38. Every registered society and branch shall deliver to every person on demand, on payment of a sum not exceeding one shilling, a copy of the rules of the society or branch.

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39. Every registered society and branch shall supply gratuitously to every member or person interested in its funds, on his application, either

(*a*) a copy of the last annual return of the society or branch ; or

(*b*) a balance sheet or other document duly audited containing the same particulars as to the receipts and expenditure, funds, and effects, of the society or branch as are contained in the annual return.

Inspe
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40. A member or person having an interest in the funds of a registered society or branch may inspect the books at all reasonable hours at the registered office of the society or branch, or at any place where the books are kept, except that the member or person shall not, unless he is an officer of the society or branch, or is specially authorised by a resolution of the society or branch to do so, have the right to inspect the loan account of any other member without the written consent of that member.

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41.—(1.) A member, or person claiming through a member, of a registered friendly society or branch, shall not be entitled to receive more than two hundred pounds by way of gross sum, together with any bonuses or additions declared upon assurances not exceeding that amount, or (except as provided by this Act) fifty pounds a year by way of annuity, from any one or more such societies or branches.

(2.) Any such society or branch may require a member, or person claiming through a member, to make and sign a statutory declaration that the total amount to which that member or person is entitled from one or more such societies or branches does not exceed the sums aforesaid.

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42. The rules of a registered society or branch may provide for accumulating at interest, for the use of any member, any surplus of his contributions to the funds of the society or branch which may remain after providing for any assurance in respect of which they are paid and for the withdrawal of the accumulations.

Militi
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43.—(1.) A person shall not, by reason of his enrolment, or service in the militia or as a naval coast volunteer, Royal Naval volunteer, naval

artillery volunteer, or in any corps of yeomanry or volunteers whatsoever, lose or forfeit any interest in a friendly society or branch whether registered or unregistered which he possesses at the time of his being so enrolled or serving, or be fined for absence from or non-attendance at any meeting of the society or branch, if his absence or non-attendance is occasioned by the discharge of his military or naval duty as certified by his commanding officer, any rules of the society or branch to the contrary notwithstanding.

(2.) A dispute between any such society or branch and person by reason of that enrolment or service shall be decided by a court of summary jurisdiction.

(3.) If the rules of a society or branch certified before the twenty-third day of July, one thousand eight hundred and fifty-five, and in force at the time of the enrolment or service, provide that a member shall be deprived of any benefit by reason of that enrolment or service, the society or branch may require of the member a contribution exceeding the rate of contribution otherwise payable by him to an amount not exceeding one-tenth of that rate during the time the member is serving out of the United Kingdom, or may suspend all claim of the member to any benefits assured by the society or branch, and all claim of the society or branch to any contributions payable by the member, during the time only he is serving out of the United Kingdom, but so that if he returns to the United Kingdom he shall forthwith be replaced on the same footing as before he went abroad on service.

Property, Funds, and Investments.

Investment of funds.

44.—(1.) The trustees of a registered society or branch may, with the consent of the committee or of a majority of the members present and entitled to vote in general meeting, invest the funds of the society or branch, or any part thereof, to any amount in any of the following ways:

26 & 27 Vict. c. 87.

(*a*) in the Post Office Savings Bank, or in any savings bank certified under the Trustee Savings Bank Act, 1863; or

(*b*) in the public funds; or

(*c*) with the National Debt Commissioners as in this Act provided; or

(*d*) in the purchase of land, or in the erection or alteration of offices or other buildings thereon; or

(*e*) upon any other security expressly directed by the rules of the society or branch, not being personal security, except as in this Act authorised with respect to loans.

(2.) The rules of a society with branches and of any branch thereof may provide for the investment of funds of the society or of that branch by the trustees of any branch, or by the trustees of the society, and the consent required for any such investment shall be the consent of the committee, or of such majority as aforesaid, of the society or branch by whom the funds are invested.

Loans to assured members.

45.—(1.) A registered society and, subject to the rules of the society, a registered branch may advance to a member of at least one full year's standing any sum not exceeding one-half of the amount of an assurance on his life, on the written security of himself and two satisfactory sureties for repayment.

(2.) The amount so advanced, with all interest thereon, may be deducted from the sum assured, without prejudice in the meantime to the operation of the security.

46. A registered society may, out of any separate loan fund to be formed by contributions or deposits of its members, make loans to members on their personal security, with or without sureties, as may be provided by the rules, subject to the following restrictions: Loans of sepa loan fu

(*a*) a loan shall not at any time be made out of money contributed for the other purposes of the society:

(*b*) a member shall not be capable of holding any interest in the loan fund exceeding two hundred pounds:

(*c*) a society shall not make any loan to a member, on personal security beyond the amount fixed by the rules, or make any loan which, together with any money owing by a member to the society, exceeds fifty pounds:

(*d*) a society shall not hold at any one time on deposit from its members any money beyond the amount fixed by the rules, and the amount so fixed shall not exceed two-thirds of the total sum owing to the society by the members who have borrowed from the loan fund.

47.—(1.) A registered society or branch may (if the rules thereof so provide) hold, purchase, or take on lease in the names of the trustees of the society or branch any land, and may sell, exchange, mortgage, lease, or build upon that land (with power to alter and pull down buildings and again rebuild), and a purchaser, assignee, mortgagee, or tenant shall not be bound to inquire as to the authority for any sale, exchange, mortgage, or lease by the trustees, and the receipt of the trustees shall be a discharge for all sums of money arising from or in connection with the sale, exchange, mortgage, or lease. Holdin land.

(2.) A branch of a registered society need not for the purposes of this section be separately registered.

(3.) Nothing in this section shall authorise a benevolent society to hold land exceeding one acre in extent.

48. Where a registered society or branch is entitled in equity to any hereditaments of copyhold or customary tenure, either absolutely or by way of mortgage or security, the lord of the manor of which the hereditaments are held shall, if the society or branch so requires, admit not more than three trustees of the society or branch as tenants in respect of such hereditaments, on payment of the usual fines, fees, and other dues payable on the admission of a single tenant. Copyho

49.—(1.) All property belonging to a registered society, whether acquired before or after the society is registered, shall vest in the trustees for the time being of the society, for the use and benefit of the society and the members thereof, and of all persons claiming through the members according to the rules of the society. Vesting propert

(2.) The property of a registered branch of a society shall vest wholly or partly in the trustees for the time being of that branch or of any other branch of which that branch forms part (or, if the rules of the society so provide, in the trustees for the time being of the society), for the use and benefit either of the members of any such branch and persons claiming through those members, or of the members of the society generally, and persons claiming through them, according to the rules of the society.

(3.) The trustees shall not be liable to make good any deficiency in the funds of the society or branch, but shall be liable only for sums of money actually received by them respectively on account of the society or branch.

Devolution on death.

50. Upon the death, resignation, or removal of a trustee of a registered society or branch, the property vested in that trustee shall, without conveyance or assignment, and whether the property is real or personal, vest, as personal estate subject to the same trusts, in the succeeding trustees of that society or branch either solely or together with any surviving or continuing trustees, and, until the appointment of succeeding trustees, shall so vest in the surviving or continuing trustees only, or in the executors or administrators of the last surviving or continuing trustee, except that stocks and securities in the public funds of Great Britain and Ireland shall be transferred into the names of the succeeding trustees, either solely or jointly with any surviving or continuing trustees.

Description n legal proceedings.

51. In all legal proceedings whatsoever concerning any property vested in the trustees of a registered society or branch, the property may be stated to be the property of the trustees in their proper names as trustees for the society or branch without further description.

nvestments with the National Debt Commissioners.

52.—(1.) A registered society or branch may pay to the account of the National Debt Commissioners at the Bank of England or the Bank of Ireland, as the case may require, any sum of money not less than fifty pounds upon a declaration of the trustees of the society or branch, or any two of them, that the money belongs exclusively to the society or branch.

(2.) The cashier of the Bank shall receive all such sums of money and place them to the account of the Commissioners in the book of the bank named "The Fund for Friendly Societies."

4 & 55 Vict. c. 21.

(3.) A sum of money paid in upon a false declaration shall be forfeited to the Commissioners, and applied by them in the manner directed by section twelve of the Savings Banks Act, 1891.

16 & 27 Vict. c. 87.

(4.) The provisions of sections twenty-one, twenty-two, twenty-four, twenty-five, twenty-six, twenty-seven, and twenty-eight of the Trustee Savings Banks Act, 1863, as to the regulation of receipts, certificates, and orders, shall apply to money paid under this section.

(5.) A society or branch so investing money with the Commissioners shall be entitled to a receipt entitling to interest at the following rates:—

To a friendly society or branch legally established before the twenty-eighth of July one thousand eight hundred and twenty-eight, which had invested funds with the Commissioners before the twenty-third of July one thousand eight hundred and fifty-five, a rate of interest in respect of any assurance made before the fifteenth of August one thousand eight hundred and fifty of	Threepence per centum per diem.
To a friendly society or branch legally established between the twenty-eighth of July one thousand eight hundred and twenty-eight and the fifteenth of August one thousand eight hundred and fifty, which had invested funds with the Commissioners before the twenty-third of July one thousand eight hundred and fifty-five, a rate of interest in respect of any assurance made before the fifteenth of August one thousand eight hundred and fifty of ..	Twopence halfpenny per centum per diem.

To a friendly society or branch legally established before the twenty-eighth of June one thousand eight hundred and eighty-eight, which had invested funds with the Commissioners before the first day of January one thousand eight hundred and ninety-six, a rate of interest in respect of any assurance made on or before the said twenty-eighth day of June of ..	Twopence per centum per diem.
To a society or branch in respect of any investment with the Commissioners, other than as hereinbefore in this section mentioned, a rate of interest of	Two pounds fifteen shillings per centum per annum.

(6.) A society or branch withdrawing money so invested with the Commissioners shall not be entitled to make any further deposit without their consent.

(7.) A society or branch so investing money with the Commissioners shall furnish such returns as may be required by the Commissioners, in respect of the funds deposited with them, and the assurances to which those funds relate.

(8.) A society or branch having funds invested with the Commissioners at a rate higher than two pounds fifteen shillings per centum per annum shall retain at that rate so much only of its funds as arises from assurances made before the date applicable to that rate, after deducting all benefit payments and management expenses incurred on account of those assurances; and whenever the society or branch fails to satisfy the Commissioners of its title to retain at that rate any part of its funds, the Commissioners shall require the withdrawal thereof, or the transfer thereof to the rate of twopence per centum per diem, or two pounds fifteen shillings per centum per annum, as the case may require, and in default of withdrawal within thirty days, shall transfer the same in their books accordingly, and shall notify the transfer to the society or branch.

(9.) Whenever it appears to the Commissioners that all the members of a society or branch assured before the fifteenth day of August one thousand eight hundred and fifty have died or ceased to be members, the Commissioners shall forthwith transfer in their books to the rate of twopence per centum per diem, or two pounds fifteen shillings per centum per annum, as the case may require, all funds of the society or branch remaining invested at any higher rate, and shall notify the transfer to the society or branch.

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53.—(1.) A receipt under the hands of the trustees of a registered society or branch, countersigned by the secretary, for all sums of money secured to the society or branch by any mortgage or other assurance, being in the form prescribed by this Act, if endorsed upon or annexed to the mortgage or other assurance, shall vacate the mortgage or assurance and vest the property therein comprised in the person entitled to the equity of redemption of that property, without reconveyance or resurrender.

(2.) If the mortgage or other assurance has been registered under any Act for the registration or record of deeds or titles, or is of copyholds or of lands of customary tenure and entered on any court rolls, the registrar under any such Act, or recording officer, or steward of the manor, or keeper of the register, shall on production of the receipt, verified by oath of any person, enter satisfaction of the mortgage or charge made by the assurance on the register or court rolls, and shall grant a certificate, either upon the mortgage or assurance, or separately to the like effect.

(3.) The certificate shall be received in evidence in all courts and proceedings without further proof.

(4.) The person making the entry shall be entitled for making the said entry and granting the said certificate to a fee of two shillings and sixpence, which in Ireland shall be paid by stamps and applied in accordance with the Public Offices Fees Act, 1879.

42 & 43 Vict. c. 58.

(5.) This section shall not extend to Scotland or the Island of Jersey.

Officers in Receipt or Charge of Money.

Security by officers.

54. Every officer of a registered society or branch having receipt or charge of money shall, if the rules of the society or branch so require, before taking upon himself the execution of his office, become bound with one sufficient surety at the least in a bond or give the security of a guarantee society, in such sum as the society or branch directs, conditioned for his rendering a just and true account of all sums of money received and paid by him on account of the society or branch at such times as its rules appoint, or as the society or branch or the trustees or committee thereof require him to do, and for the payment by him of all sums due from him to the society or branch.

Accounts of officers.

55.—(1.) Every officer of a registered society or branch having receipt or charge of money shall, at such times as by the rules of the society or branch he should render account, or upon demand made, or notice in writing given or left at his last or usual place of residence, give in his account as may be required by the society or branch, or by the trustees or committee thereof, to be examined and allowed or disallowed by them, and shall, on the like demand or notice, pay over all sums of money and deliver all property in his hands or custody to such person as the society or branch, or the committee or the trustees, appoint.

(2.) In case of any neglect or refusal to deliver the account, or to pay over the sums of money or to deliver the property in manner aforesaid, the trustees or authorised officers of the society or branch may sue upon the bond or security before mentioned, or may apply to the county court or to a court of summary jurisdiction, and the order of either such court shall be final and conclusive.

Payments on Death generally.

Power of member to dispose of sums payable on his death by nomination.

56.—(1.) A member of a registered society (other than a benevolent society or working-men's club) or branch thereof, not being under the age of sixteen years, may, by writing under his hand delivered at or sent to the registered office of the society or branch, or made in a book kept at that office, nominate a person to whom any sum of money payable by the society or branch on the death of that member, not exceeding one hundred pounds, shall be paid at his decease.

(2.) The sum of money payable by the society or branch on the death of a member, shall include sums of money contributed to or deposited in the separate loan account and the sums of money accumulated for the use of the member under the provisions of this Act with interest thereon.

(3.) The person so nominated must not be an officer or servant of the society or branch, unless that officer or servant is the husband, wife, father, mother, child, brother, sister, nephew, or niece of the nominator.

(4.) A nomination so made may be revoked and varied by any similar document under the hand of the nominator, delivered, sent, or made as aforesaid.

(5.) The marriage of a member of a society or branch shall operate as a revocation of any nomination theretofore made by that member under this section.

Proceedi on death nominat

57.—(1.) On receiving satisfactory proof of the death of a nominator, the society or branch shall pay to the nominee the amount due to the deceased member, not exceeding the said sum of one hundred pounds.

(2.) The receipt of a nominee over sixteen years of age for any amount so paid shall be valid.

(3.) If the total sum in respect to which a nomination may be made under this Act by a member, after deducting any sums of money payable under the rules of the society or branch, or otherwise, for the purpose of defraying funeral expenses, exceeds at the time of the death of that member eighty pounds, the society or branch shall before making any payment require the production of a duly stamped receipt for the succession or legacy duty payable thereon, or a letter or certificate from the Commissioners of Inland Revenue stating that no such duty is payable.

(4.) The Commissioners shall give such receipt, letter, or certificate on the payment of the duty or satisfactory proof of no duty being payable, as the case may be.

Intestacy

58.—(1.) If any member of a registered society or branch, entitled from the funds thereof to a sum not exceeding one hundred pounds, dies intestate and without having made any nomination thereof then subsisting, the society or branch may, without letters of administration, distribute the sum among such persons as appear to a majority of the trustees, upon such evidence as they may deem satisfactory, to be entitled by law to receive that sum, subject, if that sum, after making such deductions as aforesaid, exceeds eighty pounds, to the obtaining from the Commissioners of Inland Revenue a receipt for the succession or legacy duty payable thereon, or a letter or certificate stating that no such duty is payable.

(2.) If any such member is illegitimate, the trustees may pay the sum of money which that member might have nominated to or among the persons who in the opinion of a majority of them, would have been entitled thereto if that member had been legitimate, or if there are no such persons, the society or branch shall deal with the money as the Treasury may direct.

Estate du to be paid when the whole est exceeds o hundred pounds.

59. When the principal value of the estate in respect of which estate duty is payable of any person entitled to make a nomination under this Act exceeds one hundred pounds, any sum paid under this Act without probate or letters of administration shall, notwithstanding such nomination or payment, be liable to estate duty as part of the amount on which that duty is charged, and the trustees of the society or branch may before making any such payment require a statutory declaration by the claimant, or by one of the claimants, that the principal value of that estate, including the sum in question, does not after deduction of debts and funeral expenses exceed the value of one hundred pounds.

Validity o payments

60.—(1.) A payment made by a registered society or branch, under the foregoing provisions of this Act with respect to payments on death generally to the person who at the time appears to a majority of the

trustees to be entitled thereunder, shall be valid and effectual against any demand made upon the trustees or the society or branch by any other person, but the next of kin or lawful representative of the deceased member shall have remedy for recovery of the money, so paid as aforesaid, against the person who has received that money.

(2.) Where the society or branch has paid money to a nominee in ignorance of a marriage subsequent to the nomination, the receipt of the nominee shall be a valid discharge to the society or branch.

Certificates of death.

61.—(1.) A registered society or branch shall not pay any sum of money upon the death of a member or other person whose death is or ought to be entered in any register of deaths, except upon the production of a certificate of that death under the hand of the registrar of deaths or other person having care of the register of deaths in which that death is or ought to be entered.

(2.) This section shall not apply to deaths at sea, nor to a death by colliery explosion or other accident where the body cannot be found, nor to any death certified by a coroner or procurator fiscal to be the subject of a pending inquest or inquiry.

Payments on Death of Children.

Limitation of amount payable.

62. A society or branch, whether registered or unregistered, shall not insure or pay on the death of a child under five years of age any sum of money which, added to any amount payable on the death of that child by any other society or branch, exceeds six pounds, or on the death of a child under ten years of age any sum of money which, added to any amount payable on the death of that child by any other society or branch, exceeds ten pounds.

Person to whom payment may be made.

63. A society or branch, whether registered or unregistered, shall not pay any sum on the death of a child under ten years of age except to the parent of the child, or to the personal representative of the parent, and upon the production by the parent or his personal representative of a certificate of death issued by the registrar of deaths, or other person having the care of the register of deaths, containing the particulars mentioned in this Act.

Particulars of certificates.

64.—(1.) Where application is made for a certificate of the death of a child for the purpose of obtaining a sum of money from a society or branch, the name of the society or branch, and the sum sought to be obtained therefrom shall be stated to the registrar of deaths.

(2.) The registrar of deaths shall write on or at the foot of the certificate the words "to be produced to the society or branch (naming the same) said to be liable for payment of the sum of *l.* (stating the same)."

(3.) All certificates of the same death shall be numbered in consecutive order.

Cases in which certificates may be given.

65.—(1.) A registrar of deaths shall not give any one or more certificates of death for the payment in the whole of any sum of money exceeding six pounds on the death of a child under five years, or for the payment in the whole of a sum exceeding ten pounds on the death of a child under ten years.

(2.) A registrar of deaths shall not grant any such certificate unless the cause of death has been previously entered in the register of deaths on the certificate of a coroner or of a registered medical practitioner who attended the deceased child during its last illness, or except upon the production of a certificate of the probable cause of death under the hand of a registered medical practitioner, or of other satisfactory evidence thereof.

Inquiries societies

66. A society or branch, whether registered or unregistered, to which is produced a certificate of the death of a child which does not purport to be the first shall, before paying any money thereon, inquire whether any and what sums of money have been paid on the same death by any other society or branch.

Saving as insurable interest, &c.

67. Nothing in this Act respecting payments on the death of children shall apply to insurances on the lives of children of any age, where the person insuring has an interest in the life of the person insured.

Disputes.

Decision disputes

68.—(1.) Every dispute between—

(*a*) a member or person claiming through a member or under the rules of a registered society or branch, and the society or branch or an officer thereof; or

(*b*) any person aggrieved who has for not more than six months ceased to be a member of a registered society or branch, or any person claiming through such person aggrieved, and the society or branch, or an officer thereof; or

(*c*) any registered branch of any society or branch and the society or branch of which it is a branch; or

(*d*) an officer of any such registered branch and the society or branch of which that registered branch is a branch; or

(*e*) any two or more registered branches of any society or branch, or any officers thereof respectively,

shall be decided in manner directed by the rules of the society or branch, and the decision so given shall be binding and conclusive on all parties without appeal, and shall not be removable into any court of law or restrainable by injunction; and application for the enforcement thereof may be made to the county court.

(2.) The parties to a dispute in a registered society or branch may, by consent (unless the rules of the society or branch expressly forbid it), refer the dispute to the chief registrar, or in Scotland or Ireland to the assistant registrar.

(3.) The chief or other registrar to whom a dispute is referred shall, with the consent of the Treasury, either by himself or by any other registrar, hear and determine the dispute, and shall have power to order the expenses of determining the dispute to be paid either out of the funds of the society or branch, or by such parties to the dispute as he may think fit, and his determination and order shall have the same effect and be enforceable in like manner as a decision made in the manner directed by the rules of the society or branch.

(4.) The chief or other registrar to whom a dispute is referred may administer oaths, and may require the attendance of all parties concerned, and of witnesses, and the production of all books and documents relating to the matter in question.

(5.) Where the rules of a registered society or branch direct that disputes shall be referred to justices, the dispute shall be determined by a court of summary jurisdiction, or, if the parties thereto consent, by the county court.

(6.) Where the rules contain no direction as to disputes, or where no decision is made on a dispute within forty days after application to the society or branch for a reference under its rules, the member or person aggrieved may apply either to the county court, or to a court of summary jurisdiction, and the court to which application is so made may hear and determine the matter in dispute; but in the case of a society with branches the said forty days shall not begin to run until application has been made in succession to all the bodies entitled to determine the dispute under the rules of the society or branch, so however that no rules shall require a greater delay than three months between each successive determination.

52 & 53 Vict. c. 49.

(7.) Notwithstanding anything contained in the Arbitration Act, 1889, or in any other Act, the court and the chief or other registrar or any arbitrator or umpire to whom a dispute is referred under the rules of a registered society or branch shall not be compelled to state a special case on any question of law arising in the case, but the court, or chief or other registrar, may, at the request of either party, state a case for the opinion in England or Ireland of the Supreme Court, and in Scotland of either division of the Inner House of the Court of Session, on any question of law, and may also grant to either party such discovery as to documents and otherwise, or such inspection of documents, and in Scotland may grant warrant for the recovery of documents and examination of havers, as might be granted by any court of law or equity, and the discovery shall be made on behalf of the society or branch by such officer thereof as the court or registrar may determine.

Change of Name, Amalgamation, and Conversion of Societies.

Power to change name.

69.—(1.) A registered society may, by special resolution, with the approval in writing of the chief registrar, or in the case of societies registered and doing business exclusively in Scotland or Ireland the assistant registrar for Scotland or Ireland respectively, change its name, and shall not change its name in any other manner.

(2). Any such change of name shall not affect any right or obligation of the society, or of any member thereof, and any pending legal proceedings may be continued by or against the trustees of the society, or any other officer who may sue or be sued on behalf of the society, notwithstanding its new name.

Amalgamation and transfer of engagements.

70.—(1.) Any two or more registered societies may, by special resolution of both or all such societies, become amalgamated together as one society, with or without any dissolution or division of the funds of those societies or either of them.

(2.) A registered society may, by special resolution, transfer its engagements to any other registered society which may undertake to fulfil the engagements of that society.

(3.) A special resolution by a registered friendly society for an amalgamation or transfer of engagements under this Act shall not be valid without—

(*a*) the assent thereto of five-sixths in value of the members, given either at the meetings at which the resolution is, according to the provisions of this Act, passed and confirmed, or at one of them, or, if the members were not present thereat, in writing; and

(*b*) the written consent of every person receiving or entitled to any relief, annuity, or other benefit from the funds of the society, unless the claim of that person is first duly satisfied, or adequate provision is made for satisfying that claim.

(4) Provided that on application of the trustees or committee of a registered friendly society desiring to amalgamate or transfer its engagements, and upon notice of that application being published in the Gazette, the chief registrar, after hearing the trustees or committee and any other persons whom he considers entitled to be heard upon the application, may, with the consent of the Treasury, order that any of the assents, consents, and conditions required by this Act, or by any regulations made under this Act, be dispensed with, and may confirm the amalgamation or transfer.

(5.) A registered society consisting wholly of members under twenty-one years of age, and a registered society or branch or branches of a society having members above twenty-one years of age, may, by resolutions registered in the manner required for the registration of an amendment of rules, become amalgamated together as one society or branch, or provide for distributing among several branches the members of a society consisting wholly of members under twenty-one years of age, and the other provisions of this section shall not apply to that amalgamation.

(6.) The value of members shall be ascertained by giving one vote to every member, and an additional vote for every five years that he has been a member, but to no one member more than five votes in the whole.

(7.) If any member of a friendly society which has amalgamated or transferred its engagements, or if any person claiming any relief, annuity, or other benefit, from the funds thereof, is dissatisfied with the provision made for satisfying his claim, that member or person may apply to the county court of the district within which the chief or any other place of business of the society is situate for relief or other order, and that court shall have the same powers in the matter as in regard to the settlement of disputes under this Act.

Conve of soc into c pany.

71.—(1) A registered society may, by special resolution, determine to convert itself into a company under the Companies Acts, 1862 to 1890, or to amalgamate with or transfer its engagements to any such company.

(2.) If a special resolution for converting a society into a company contains the particulars required by the Companies Act 1862 to 1890, to be contained in the memorandum of association of a company, and a copy thereof has been registered at the central office, a copy of that resolution under the seal or stamp of the central office shall have the same effect as a memorandum of association duly signed and attested under the said Acts.

(3.) If a society is registered as, or amalgamates with, or transfers all its engagements to, a company, the registry of the society under this Act shall thereupon become void, and shall be cancelled by the chief registrar or by the assistant registrar for Scotland or Ireland under his direction; but the registration of a society as a company shall not affect any right or claim

subsisting against that society, or any penalty incurred by that society; and for the purpose of enforcing any such right, claim, or penalty, the society may be sued and proceeded against in the same manner as if it had not become registered as a company; and every such right or claim, or the liability to any such penalty, shall have priority, as against the property of the company, over all other rights or claims against or liabilities of the company.

Saving for right of creditors.

72. An amalgamation or transfer of engagements in pursuance of this Act shall not prejudice any right of a creditor of either or any society party thereto.

Conversion of society into branch.

73.—(1.) A registered society may, by a resolution passed by a majority of the members or delegates present and entitled to vote at any general meeting of which notice specifying the intention to propose any such resolution has been duly given according to the rules, determine to become a branch of any other registered society, and also, if thought fit, of any registered branch thereof.

(2.) If the rules of the society do not comply with all the provisions of this Act and of the Treasury regulations in respect of the registry of branches, the meeting at which any such resolution is passed may amend the rules so as to bring the rules into compliance with this Act and with the Treasury regulations.

(3.) A copy of the rules of the society marked to show the amendments, if any, made at the meeting, and two copies of the resolution and of such amendment of rules, if any, as aforesaid, each signed by the chairman of the meeting and by the secretary of the society so determining to become a branch of another society, and countersigned by the secretary of that other society, shall be sent to the registrar.

(4.) If the registrar finds that the rules, with or without such amendment as aforesaid, comply with the provisions of this Act and of the Treasury regulations, he shall cancel the registry of the first-mentioned society and register it as a branch of that other society, and also, if so specified in the resolution before mentioned, of any branch of that other society, without further request or notice, and shall register such amendment of rules without further application or evidence, and until such registry as aforesaid the resolution shall not take effect.

(5.) An advertisement of any cancelling of registry under this section shall not be requisite.

(6.) The rules of a society which becomes a branch under this section shall, so far as they are not contrary to any express provision of this Act or of the Treasury regulations, and subject to any such amendment thereof as aforesaid, continue in force as the rules of the branch until amended.

(7.) This section shall apply only to societies registered before the first day of January one thousand eight hundred and seventy-six.

Meaning of special resolution.

74. For the purposes of this Act a special resolution shall mean a resolution which is—

(*a*) passed by a majority of not less than three fourths of such members of a registered society, entitled under the rules to vote as may be present in person or by proxy (where the rules allow proxies) at any general meeting of which notice specifying the intention to propose that resolution has been duly given according to the rules; and

(*b*) confirmed by a majority of such members entitled under the rules to vote as may be present in person or by proxy (where the rules allow proxies), at a subsequent general meeting of which notice has been duly given, held not less than fourteen days nor more than one month from the day of the meeting at which such resolution was first passed.

At any meeting mentioned in this section a declaration by the chairman that the resolution has been carried shall be conclusive evidence of the fact.

Registrati of special resolution

75. A copy of every special resolution for any of the purposes mentioned in this Act, signed by the chairman of the meeting and countersigned by the secretary, shall be sent to the central office and registered there, and until that copy is so registered the special resolution shall not take effect.

Inspection: Cancelling and Suspension of Registry: Dissolution.

Inspector and speci meetings.

76.—(1.) Upon the application—

(*a*) of one fifth of the whole number of members of a registered society; or

(*b*) in the case of a registered society of one thousand members and not exceeding ten thousand, of one hundred members: or

(*c*) in the case of a registered society of more than ten thousand members, of five hundred members,

the chief registrar, or in cases of societies registered and doing business exclusively in Scotland or in Ireland the assistant registrars for Scotland and Ireland respectively, but with the consent of the Treasury in every case, may—

(*a*) appoint an inspector or inspectors to examine into and report on the affairs of the society; or

(*b*) call a special meeting of the society.

(2.) The application under this section shall be supported by such evidence, for the purpose of showing that the applicants have good reason for requiring an inspection to be made or meeting to be called, and that they are not actuated by malicious motives in their application, and such notice thereof shall be given to the society, as the chief registrar directs.

(3.) The chief or assistant registrar may, if he thinks fit, require the applicants to give security for the costs of the proposed inspection or meeting, before appointing any inspector or calling the meeting.

(4.) All expenses of and incidental to any such inspection or meeting shall be defrayed by the members applying therefor or out of the funds of the society, or by the members or officers, or former members or officers, of the society in such proportions as the chief or assistant registrar directs.

(5.) An inspector appointed under this section may require the production of all or any of the books and documents of the society, and may examine on oath its officers, members, agents, and servants in relation to its business, and may administer such oath accordingly.

(6.) The chief or assistant registrar may direct at what time and place a special meeting under this section is to be held and what matters are to be discussed and determined at that meeting, and the meeting shall have all the powers of a meeting called according to the rules of the society, and shall in all cases have power to appoint its own chairman, any rule of the society to the contrary notwithstanding.

(7.) This section shall not apply to a society with branches, except with the consent of the central body of that society.

Cancelling and suspension of registry.

77.—(1.) The chief registrar, or, in the case of a society registered and doing business in Scotland or Ireland exclusively, the assistant registrar for Scotland or Ireland, may—

(*a*) if he thinks fit, at the request of a society, to be evidenced in such manner as he may direct: or

(*b*) with the approval of the Treasury, on proof to his satisfaction that an acknowledgment of registry has been obtained by fraud or mistake, or that a society exists for an illegal purpose, or has wilfully and after notice from a registrar whom it may concern violated any of the provisions of this Act, or has ceased to exist,

by writing under his hand cancel the registry of a society.

(2.) The chief or assistant registrar, in any case in which he might, with the approval of the Treasury, cancel the registry of a society, may, by writing under his hand, suspend the registry for any term not exceeding three months, and may, with the approval of the Treasury, renew the suspension for the like period.

(3.) Unless the chief or assistant registrar has given to a registered society not less than two months previous notice in writing, specifying briefly the ground of any proposed cancelling or suspension, the registry of the society shall not be cancelled (except at its request) or suspended.

(4.) Where the registry of a society has been cancelled or suspended, notice thereof shall forthwith be advertised.

(5.) Where the registry of a society has been suspended or cancelled, the society shall from the time of the suspension or cancelling (but if suspended, only while the suspension lasts, and subject also to the right of appeal given by this section) absolutely cease to enjoy as such the privileges of a registered society, but without prejudice to any liability actually incurred by the society, and any such liability may be enforced against the society as if the suspension or cancelling had not taken place.

(6.) A society may appeal from the cancelling of its registry, or from any suspension thereof which is renewed after six months, as follows:—

(*a*) from the assistant registrar for Scotland or Ireland to the chief registrar, and from him to the Court of Session in Scotland or the High Court in Ireland respectively; and

(*b*) from the chief registrar, in cases not relating exclusively either to Scotland or to Ireland, to the High Court in England.

Dissolution of societies.

78.—(1.) Subject to the provision of this Act as to the dissolution of societies with branches, a registered society or branch may terminate or be dissolved in any of the following ways:—

(*a*) upon the happening of any event declared by the rules to be the termination of the society or branch; or

(*b*) as respects societies or branches other than friendly societies or branches, by the consent of three-fourths of the members, testified by their signatures to the instrument of dissolution; or

(*c*) as respects friendly societies or branches, by the consent of five-sixths in value of the members (including honorary members, if any), testified by their signatures to the instrument of dissolution, and also by the

written consent of every person receiving or entitled to receive any relief, annuity, or other benefit from the funds of the society or branch, unless the claim of that person is first duly satisfied, or adequate provision made for satisfying that claim, and, in the case of a branch, with the consent of the central body of the society, or in accordance with the general rules of the society; or

(*d*) by the award of the chief registrar or assistant registrars in the cases specified in this Act.

(2.) The provisions of this Act as to the method of calculating the value of members and the remedy of members and persons dissatisfied with the provisions made for satisfying their claims in the case of the amalgamation or transfer of engagements of a registered friendly society shall apply to the dissolution of a registered friendly society or branch.

Instrur of dis- solutio

79. When a registered society or branch is terminated by an instrument of dissolution:—

(1.) The instrument shall set forth—

(*a*) the liabilities and assets of the society or branch in detail; and

(*b*) the number of members and the nature of their interests in the society or branch; and

(*c*) the claims of creditors (if any), and the provision to be made for their payment; and

(*d*) the intended appropriation or division of the funds and property of the society or branch, unless the appropriation or division is stated in the instrument of dissolution to be left to the award of the chief registrar.

(2.) Alterations in the instrument of dissolution may be made with the like consents as are in this Act required for the dissolution of a society or branch, testified in the same manner.

(3.) A statutory declaration shall be made by one of the trustees, or by three members and the secretary of the society or branch, that the provisions of this Act have been complied with, and shall be sent to the registrar with the instrument of dissolution.

(4.) The instrument shall not in the case of a registered friendly society or branch direct or contain any provision for a division or appropriation of the funds of the society or branch, or any part thereof, otherwise than for the purpose of carrying into effect the objects of the society or branch as declared in the rules thereof, unless the claim of every member or person claiming any relief, annuity, or other benefit from the funds thereof is first duly satisfied, or adequate provisions are made for satisfying those claims.

(5.) The instrument of dissolution and all alterations therein shall be registered in manner in this Act provided for the registry of amendments of rules, and shall be binding upon all the members of the society or branch.

(6.) The registrar shall cause a notice of the dissolution to be advertised at the expense of the society or branch, and, unless within three months from the date of the Gazette in which the advertisement appears, a member or other person interested in or having any claim on the funds of the society or branch commences proceedings to set aside the dissolution of the society or branch, and the dissolution is set aside accordingly, the society or branch shall be legally dissolved from the date of that advertisement, and the requisite consents to the instrument of dissolution shall be considered to have been duly obtained without proof of the signatures thereto.

Dissolution by award.

80.—(1.) Upon the application made in writing under their hands—

(*a*) of one fifth of the whole number of members of a registered society or branch; or

(*b*) in the case of a registered society or branch of one thousand members and not exceeding ten thousand, of one hundred members; or

(*c*) in the case of a registered society or branch of more than ten thousand members, of five hundred members,

the chief registrar may by himself, or by any assistant registrar, or by any actuary or public auditor whom the chief registrar may appoint in writing under his hand, investigate the affairs of the society or branch, but shall give not less than two months previous notice in writing to the society or branch whose affairs are to be investigated.

(2.) The application shall—

(*a*) state that the funds of the society or branch are insufficient to meet the existing claims thereon, or that the rates of contribution fixed in the rules of the society or branch are insufficient to cover the benefits assured; and

(*b*) set forth the grounds on which the insufficiency is alleged; and

(*c*) request an investigation into the affairs of the society or branch with a view to the dissolution thereof.

(3.) If upon the investigation it appears that the funds of the society or branch are insufficient to meet the existing claims thereon, or that the rates of contribution fixed in the rules of the society or branch are insufficient to cover the benefits assured to be given by the society or branch, the chief registrar may, if he considers it expedient so to do, award that the society or branch be dissolved, and its affairs wound up, and shall direct in what manner the assets of the society or branch shall be divided or appropriated: Provided always, that the chief registrar may suspend his award for such period as he may deem necessary to enable the society or branch to make such alterations and adjustment of contributions and benefits as will in his judgment prevent the necessity of the award of dissolution being made.

(4.) A registrar proceeding under this section shall have all the same powers and authorities, enforceable by the same penalties, as in the case of a dispute referred to him under this Act.

(5.) Every award under this section, whether for dissolution or distribution of funds, shall be final and conclusive on the society or branch in respect of which the award is made, and on all members of the society or branch and on all other persons having any claim on the funds of the society or branch, without appeal, and shall be enforced in the same manner as a decision on a dispute under this Act.

(6.) The expenses of every investigation and award, and of publishing every notice of dissolution, shall be paid out of the funds of the society or branch before any other appropriation thereof is made.

(7.) Notice of every award for dissolution shall, within twenty-one days after the award has been made, be advertised by the central office and unless, within three months from the date on which that advertisement appears, a member or person interested in or having any claim on the funds of the society or branch consequent upon such award, and the dissolution is set aside accordingly, the society or branch shall be legally dissolved from the date of the advertisement, and the requisite consents to the application to the registrar shall be considered to have been duly obtained without proof of the signatures thereto.

81. A notice required by this Act to be advertised shall be published in the Gazette and in some newspaper in general circulation in the neighbourhood of the registered office of the society or branch. Advertisement of notices.

82. The provisions of this Act respecting the dissolution of societies shall not apply to any society having branches except with the consent of the central body of the society. Dissolution of societies having branches.

83.—(1.) Where a person takes any proceeding to set aside the dissolution of a society or branch, he shall give notice of the proceeding to the central office not less than seven days before the proceeding is commenced. Notice of proceedings or order set aside dissolution

(2.) Where an order is made setting aside the dissolution of a society or branch, the society or branch shall give notice of the order to the central office within seven days after the order has been made.

Offences, Penalties, and Legal Proceedings.

84. It shall be an offence under this Act if— Offences

(*a*) a registered society or branch or an officer or member thereof fails to give any notice, send any return or document, do or allow to be done any thing which the society, branch officer, or person is by this Act required to give, send, do, or allow to be done: or

(*b*) a registered society or branch or an officer or member thereof wilfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the chief or other registrar or by any other person authorised under this Act, or does any thing forbidden by this Act: or

(*c*) a registered society or branch or an officer or member thereof makes a return or wilfully furnishes information in any respect false or insufficient: or

(*d*) an officer or member of a body which, having been a branch of a society, has wholly seceded or been expelled from that society, thereafter uses the name of that society or any name implying that the body is a branch of that society, or the number by which that body was designated as such branch: or

(*e*) where a dispute is referred under this Act to the chief or other registrar, a person refuses to attend or to produce any documents, or to give evidence before the chief or other registrar: or

(*f*) a society or branch whether registered or unregistered pays money on the death of a child under ten years of age otherwise than is provided by this Act: or

(*g*) a parent or personal representative of a parent claiming money on the death of a child produces a certificate of the death other than is in this Act provided to the society or branch from which the money is claimed, or produces a false certificate, or one fraudulently obtained, or in any way attempts to defeat the provisions of this Act with respect to payments upon the death of children.

85. Where a registered society or branch is guilty of an offence under this Act every officer of the society or branch bound by the rules thereof to fulfil any duty whereof the offence is a breach, or if there is no such officer, then every member of the committee, unless that member is proved to have Offences by societies to be also offences of officers,

been ignorant of or to have attempted to prevent the commission of the offence, shall be liable to the same penalty as if he had committed the offence.

Continuing offences.

86. Every default under this Act constituting an offence, if continued, shall constitute a new offence in every week during which the default continues.

Punishment of fraud, false declarations, and misappropriations.

87.—(1.) If any person, with intent to mislead or defraud, gives to any other person a copy of any rules, laws, regulations, or other documents, other than the rules of a registered society or branch, on the pretence that they are the existing rules of that society or branch, or that there are no other rules of the society or branch, or gives to any person a copy of any rules on the pretence that those rules are the rules of a registered society or branch when the society or branch is not registered, the person so offending shall be guilty of a misdemeanor.

(2.) If any person knowingly makes a false or fraudulent statement in any statutory declaration required by this Act, he shall be guilty of a misdemeanor.

(3.) If any person obtains possession by false representation or imposition of any property of a registered society or branch, or withholds or misapplies any such property in his possession, or wilfully applies any part thereof to purposes other than those expressed or directed in the rules of the society or branch and authorised by this Act, he shall, on such complaint as is in this section mentioned, be liable on summary conviction to a fine not exceeding twenty pounds, and costs, and to be ordered to deliver up all such property, or to repay all sums of money applied improperly, and in default of such delivery or repayment, or of the payment of such fine and costs as aforesaid, to be imprisoned, with or without hard labour, for any time not exceeding three months.

(4.) Complaint under this section may be made—

(*a*) in the case of a registered society, by the society or any member authorised by the society, or the trustees or committee of the society; or

(*b*) in the case of a registered branch, by

(i.) the branch or any member authorised by the branch or the trustees or committee thereof; or

(ii.) the central body of the society of which the branch forms part; or

(iii.) any member of the society or branch authorised by the central body; or

(*c*) in any case, by the chief registrar or any assistant registrar by his authority, or by any member of the society or branch authorised by the central office.

(5.) Nothing in this Act shall prevent any such person from being proceeded against by way of indictment, if not previously convicted of the same offence under the provisions of this Act.

Fine for falsification.

88. If any person wilfully makes, orders, or allows to be made, any entry, erasure in, or omission from a balance sheet of a registered society or branch, or a return or document required to be sent, produced, or delivered

for the purposes of this Act, with intent to falsify the same, or to evade any of the provisions of this Act, he shall be liable to a fine not exceeding fifty pounds.

Fine fo ordinar offence

89. A society or branch, and an officer or member of a society or branch, or other person guilty of an offence under this Act for which a fine is not expressly provided shall be liable to a fine of not more than five pounds.

Special offence the cas friendl societi

90. If an officer or person aids or abets in the amalgamation or transfer of engagements or in the dissolution of a friendly society otherwise than as in this Act provided he shall be liable on summary conviction to the fine imposed by this Act for offences thereunder, or to be imprisoned with hard labour for a term not exceeding three months.

Recove fines.

91.—(1.) A fine imposed by this Act, or by any regulations thereunder, or by the rules of a registered society or branch, shall be recoverable in a court of summary jurisdiction.

(2.) Any such fine shall be recoverable at the suit of the chief registrar or of any assistant registrar, or of any person aggrieved.

Jurisdi of cour summa jurisdi

92. In England and Ireland all offences and fines under this Act may be prosecuted and recovered in the manner directed by the Summary Jurisdiction Acts either—

(*a*) at the place where the offence was committed; or

(*b*) as respects a prosecution against a registered society or branch or an officer thereof, at the place where the registered office of the society or branch is situated; or

(*c*) as respects a prosecution against a person other than a registered society or branch or an officer thereof, at the place where the person is resident at the time of the institution of the prosecution.

Appeal

93.—(1.) In England or Ireland any person may appeal to quarter sessions from any order or conviction made by a court of summary jurisdiction under this Act.

(2.) In Scotland any person may appeal from any order or conviction under this Act in accordance with the provisions of the Summary Jurisdiction (Scotland) Acts.

Legal ceedin

94.—(1.) The trustees of a registered society or branch, or any other officers authorised by the rules thereof, may bring or defend, or cause to be brought or defended, any action or other legal proceeding in any court whatsoever, touching or concerning any property, right, or claim of the society or branch, and may sue and be sued in their proper names, without other description than the title of their office.

(2.) In legal proceedings brought under this Act by a member, or person claiming through a member, a registered society or branch may also be sued in the name, as defendant, of any officer or person who receives contributions or issues policies on behalf of the society or branch within the jurisdiction of the court in which the legal proceeding is brought, with the addition of the words "on behalf of the society or branch" (naming the same).

(3.) A legal proceeding shall not abate or be discontinued by the death, resignation, or removal from office of any officer, or by any act of any such officer after the commencement of the proceedings.

(4.) The summons, writ, process, or other proceeding, to be issued to or against the officer or other person sued on behalf of a registered society or branch, shall be sufficiently served by personally serving that officer or other person, or by leaving a true copy thereof at the registered office of the society or branch, or at any place of business of the society or branch within the jurisdiction of the court in which the proceeding is brought, or, if that office or place of business is closed, by posting the copy on the outer door of that office or place of business.

(5.) In all cases where the said summons, writ, process, or other proceeding is not served by means of such personal service or by leaving a true copy thereof at the registered office of the society or branch as aforesaid, a copy thereof shall be sent in a registered letter addressed to the committee at the registered office of the society or branch, and posted at least six days before any further step is taken on the proceeding.

Fees: Forms: Regulations: Evidence.

Remuneration of county court officers.

95. The registrars and high bailiffs of the county courts shall be remunerated for the duties to be performed by them under this Act in such manner as the Treasury, with the consent of the Lord Chancellor, may direct.

Fees.

96.—(1.) The Treasury may determine a scale of fees to be paid for matters to be transacted or for the inspection of documents under this Act

(2.) A fee shall not be payable on the registry of any friendly, benevolent, or cattle insurance society, or working-men's club, or of any amendment of the rules thereof.

(3.) All fees which may be received by any registrar under or by virtue of this Act shall be paid into the Exchequer.

Fees payable to registrar of births and deaths.

97.—(1.) For the purpose of this Act a certificate of the birth or death of any member of or person insured or to be insured with a registered friendly society or branch shall, on application being made as in this Act provided, be given under his hand by the registrar of births or deaths, for a sum not exceeding one shilling, in place of all fees or payments otherwise payable in respect thereof.

(2.) Whenever application is made at one time to any such registrar for more certificates than one of the same birth or death for the purposes of and in the manner prescribed by this Act, the sum charged for every such certificate other than the first shall not exceed sixpence.

(3.) Whenever the registrar is required by the person applying for any certificate of birth or death to fill up the form of application, he may demand a sum not exceeding threepence for so doing.

(4.) For the purposes of this section the expression "registrar of births or deaths" shall include any person having the care of the register of births or deaths in which the birth or death is entered.

Forms.

98.—(1.) The forms to be used for registry shall be those contained in Part I. of the Second Schedule to this Act or such other forms as are prescribed by Treasury regulations.

(2.) The acknowledgment of registry of a branch and of any amendment of the rules of a branch shall be in the forms provided in Part II. of the same schedule.

(3.) Every annual or other return, abstract of valuation, and other document required for the purposes of this Act, shall be made in such form and shall contain such particulars as the chief registrar prescribes.

(4.) A receipt under this Act endorsed upon or annexed to a mortgage or other assurance shall be in the form set forth in Part III. of the same schedule, or in any form specified in the rules of the society or branch or any schedule thereto, and a bond to be given by an officer in receipt or charge of money shall be in one of the forms set forth in the said part.

(5.) Applications for certificates of births and deaths under this Act shall be in such form and under such regulations as may be approved of by the registrar-general of births, deaths, and marriages for England, Scotland, and Ireland respectively.

Regulat for carr out Act

99.—(1.) The Treasury may make regulations respecting registry and procedure under this Act, and the seal to be used for registry, and the duties and functions of the registrar, and the inspection of documents kept by the registrar under this Act, and generally for carrying this Act into effect.

(2.) All such regulations shall forthwith be laid before both Houses of Parliament.

Eviden docume

100. Every document bearing the seal or stamp of the central office shall be received in evidence without further proof; and every document purporting to be signed by the chief or any assistant registrar, or any inspector, or public auditor or valuer under this Act, shall, in the absence of any evidence to the contrary, be received in evidence without proof of the signature.

Application of Act.

Applica to existi societie

101.—(1.) This Act shall apply to societies and branches subsisting at the commencement of this Act which or the rules of which have been registered, enrolled, or certified, under any Act relating to friendly societies or cattle insurance societies, as if they had been registered under this Act, and the rules of those societies and branches shall, so far as they are not contrary to any express provision of this Act, continue in force until altered or rescinded.

(2.) Where the contingent annual payments to which the members or the nominees of the members of friendly societies or branches, established before the fifteenth day of August one thousand eight hundred and fifty, may become entitled exceed the limit fixed by this Act, the rules of those societies and branches shall continue to be valid, anything in this Act to the contrary notwithstanding.

Applica to Scotl

102. In the application of this Act to Scotland:—

The expression "land" shall include heritable subjects of whatever description;

The expressions "court of summary jurisdiction" and "county court" shall mean the sheriff court of the county;

The expression "administration" shall mean confirmation;

The expression "misdemeanor" shall mean crime and offence.

Application to the Isle of Man.

103. This Act shall apply to the Isle of Man as if it were part of England, subject to the following variations:—

(1.) The expressions "Supreme Court" and "county court" shall respectively mean the Chancery Division of the High Court of the said isle, in which court the proceedings under this Act may be regulated by rules and orders to be made in that behalf by the court, and, until otherwise provided, shall be regulated according to the ordinary practice of that court:

(2.) The expression "the Companies Acts 1862 to 1890" shall mean the law for the time being in force in the said isle for the regulating and winding up of companies:

(3.) The expression "Summary Jurisdiction Acts" shall mean the laws for the time being in force in the said isle for regulating the exercise of summary jurisdiction by justices of the peace:

(4.) All offences and fines under this Act shall be prosecuted and recovered summarily before a high bailiff or two justices of the peace at the suit or instance, except in the case of a complaint under section eighty-seven of this Act, of a registrar or of a head constable, and a misdemeanor under this Act shall be punishable by fine or imprisonment:

(5.) All fines recovered under this Act shall be paid to the treasurer of the said isle, and be added to the general revenue of the said isle:

(6.) A person may appeal from any order or conviction to be made in a case of summary jurisdiction under this Act in the manner prescribed by the law in force in the said isle as to appeals in cases of summary jurisdiction.

Application to Channel Islands.

104. This Act shall apply to the Channel Islands as if they were part of England, subject to the following variations:—

(1.) As respects the Island of Jersey,

(*a*) The expression "county court" shall mean the court for the recovery of petty debts, in all cases in which the claim or demand shall not exceed the sum of ten pounds sterling, and in all other cases the inférior number of the Royal Court of the said island, composed of the bailiff and two jurats of the said court:

(*b*) The expression "court of summary jurisdiction" shall have in civil cases the same meaning as the expression county court:

(*c*) All misdemeanors under this Act shall be prosecuted, tried, and punished in the form and manner prescribed by the law and custom of the said island with respect to crimes and offences *(crimes et délits)*:

(*d*) All other offences and all fines under this Act shall be prosecuted and recovered summarily before the magistrate of the court for the repression of minor offences, in all cases of his competency, at the suit or instance, except in the case of a complaint under section eighty-seven of this Act, of the constable of the parish in which the offence or other unlawful act has been committed, and in all other cases before the bailiff and two jurats of the Royal Court, at the suit or instance (except as aforesaid) of Her Majesty's Procurator General for the said island:

(*e*) All fines recovered under this Act shall be paid to the officers who by the law and practice of the said island are entitled to receive

fines levied by order of the said courts respectively, and shall by such officers be accounted for and paid to Her Majesty's Receiver General in the said island on behalf of the Crown:

(*f*) All proceedings under this Act in any of the courts of the said island shall be regulated according to the ordinary practice of those courts respectively, and all fines shall in default of payment be enforced in the same manner as fines payable to the Crown in the said island:

(*g*) The rules prescribed by the law of the said island with respect to appeals in civil and criminal cases shall be followed as to appeals from any orders, judgments, or convictions made in cases of summary jurisdiction under this Act:

(*h*) The expression "the Companies Acts, 1862 to 1890," shall mean the law for the time being in force in the said island for the formation, regulation, and winding up of companies:

(*i*) All friendly societies and branches within the bailiwick of the said island may invest any part of their funds in any of the public funds under the guarantee of the states of the said island.

(2). As respects the bailiwick of the Island of Guernsey:

(*a*) The Court of Primary Instance within the bailiwick shall have all such powers and authorities as are by this Act conferred either on courts of summary jurisdiction or on county courts in England: Provided that a sentence may be appealed from, if the case admits of an appeal under the Orders in Council now in force within the bailiwick, but that the decision of the Royal Court when sitting in a body as a court of appeal shall be final:

(*b*) All friendly societies and branches within the bailiwick shall be authorised to invest any part of their funds in the state bonds either of Guernsey or of Alderney:

(*c*) The expression "the Companies Acts, 1862 to 1890," shall mean the law for the time being in force in the said bailiwick for the regulation and winding up of Companies:

(*d*) All offences and fines under this Act shall be prosecuted and recovered summarily before the court of primary jurisdiction at the suit or instance, except in the case of a complaint under section eighty-seven of this Act, of the law officers of the Crown or of a constable of a parish:

(*e*) All fines recovered under this Act shall be paid to the Receiver General, to be by him carried to the account of the Crown Revenue.

Paym repres tative Chann Island Isle of

105. As respects the Channel Islands and the Isle of Man, when any sum of money becomes payable on the death of a person entitled to make a nomination under this Act that sum shall, in default of any such nomination, be paid to the deceased member's legal representative, according to the law of the island in which that deceased member was domiciled.

Supplemental.

Defini

106. In this Act, unless a contrary intention appears:

The expression "the registrar" shall mean for England the central office, and for Scotland or Ireland the assistant registrar for Scotland or Ireland:

The expression "land" shall include any interest in land:

The expression "property" shall extend to all property whether real or personal (including books and papers):

The expression "registered society" shall mean a society registered under this Act, and shall include societies subsisting at the commencement of this Act to which the provisions of this Act apply:

The expression "amendment of rule" shall include a new rule, and a resolution rescinding a rule:

The expression "branch" shall mean any number of the members of a society, under the control of a central body, having a separate fund, administered by themselves or by a committee or officers appointed by themselves, and bound to contribute to a fund under the control of a central body:

The expression "committee" shall mean the committee of management or other directing body of a society or branch:

The expression "persons claiming through a member" shall include the nominees of the member where nomination is allowed:

The expression "officer" shall include any trustee, treasurer, secretary, or member of the committee of management of a society or branch, or person appointed by the society or branch to sue and be sued on its behalf:

The expression "meeting" shall include (where the rules of a society or branch so allow) a meeting of delegates appointed by members:

The expression "gazette" shall mean the London Gazette for England, the Edinburgh Gazette for Scotland, and the Dublin Gazette for Ireland:

The expression "Treasury regulations" shall mean any regulations made and approved by the Treasury and in force under this Act.

Repeal.

107. The Acts mentioned in the Third Schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

Commencement and extent of Act.

108. This Act shall come into operation on the first day of January next after the passing thereof and shall extend to the whole of the British Islands.

Short title.

109. This Act may be cited as the Friendly Societies Act, 1896.

SCHEDULES.

THE FIRST SCHEDULE.

MATTERS TO BE PROVIDED FOR BY THE RULES OF SOCIETIES REGISTERED UNDER THIS ACT.

1. The name and place of office of the society.

2. The whole of the objects for which the society is to be established, the purposes for which the funds thereof shall be applicable, the terms of admission of members, the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member, and the consequences of nonpayment of any subscription or fine. [38 & 3 c. 60, S 50 & 51 c. 56. s and 15 58 & 5 c. 26. s

3. The mode of holding meetings and right of voting, and the manner of making, altering, or rescinding rules.

4. The appointment and removal of a committee of management (by whatever name), of a treasurer and other officers, and of trustees, and in the case of a society with branches, the composition and powers of the central body, and the conditions under which a branch may secede from the society.

5. The investment of the funds, the keeping of the accounts, and the audit of the same once a year at least.

6. Annual returns to the registrar of the receipts, funds, effects, and expenditure, and numbers of members, of the society.

7. The inspection of the books of the society by every person having an interest in the funds of the society.

8. The manner in which disputes shall be settled.

9. In case of dividing societies, a provision for meeting all claims upon the society existing at the time of division before any such division takes place.

And also in the case of friendly and cattle insurance societies :—

10. The keeping separate accounts of all moneys received or paid on account of every particular fund or benefit assured for which a separate table of contributions payable shall have been adopted, and the keeping separate account of the expenses of management, and of all contributions on account thereof.

11. (Except as to cattle insurance societies) a valuation once at least in every five years of the assets and liabilities of the society, including the estimated risks and contributions.

12. The voluntary dissolution of the society by consent in a friendly society of not less than five sixths in value of the members, and of every person for the time being entitled to any benefit from the funds of the society, unless his claim be first satisfied or adequately provided for; and in a cattle insurance society by consent of three fourths in number of the members.

13. The right of one fifth of the total number of members, or of one hundred members in the case of a society of one thousand members and not exceeding ten thousand, or of five hundred members in the case of a society of more than ten thousand members, to apply to the chief registrar, or in case of societies registered and doing business exclusively in Scotland or Ireland to the assistant registrar for Scotland or Ireland, for an investigation of the affairs of the society, or for winding up the same.

Section 98.

THE SECOND SCHEDULE.

FORMS.

PART I.

ACKNOWLEDGMENT OF REGISTRY OF SOCIETY.

38 & 39 Vict. c. 60 Sch. IV.] The Society is registered as a [*friendly society, cattle insurance society, benevolent society, working-men's club*, or *specially authorised society*] under the Friendly Societies Act, 1896, this day of

[*Seal or stamp of central office*, or *signature of Assistant Registrar for Scotland or Ireland.*]

ACKNOWLEDGMENT OF REGISTRY OF AMENDMENT OF RULES.

The foregoing amendment of the rules of the Society is registered under the Friendly Societies Act, 1896, this day of

[*Seal or stamp of central office*, or *signature of Assistant Registrar for Scotland or Ireland.*]

PART II.

ACKNOWLEDGMENT OF REGISTRY OF BRANCH.

50 & 51 Vict. c. 56. Sch. I.] The of the Society [and of the branch of the same] is registered as a branch under the Friendly Societies Act, 1896, this day of

[*Seal of central office*, or *signature of Assistant Registrar for Scotland or Ireland.*]

ACKNOWLEDGMENT OF REGISTRY OF AMENDMENT OF BRANCH RULES.

The foregoing amendment of the branch rules of the is registered under the Friendly Societies Act, 1896, this day of

[*Seal of central office* or *signature of Assistant Registrar for Scotland or Ireland.*]

PART III.

FORM OF BOND.

(1.)—In England or Ireland.

Know all men by these presents, that we, *A.B.* of , one of the officers of the Society [*or* of the branch of the Society] having its registered office at , in the county of , and *C.D.* of (as surety on behalf of the said *A.B.*), are jointly and severally held and firmly bound to *E.F.* of , *G.H.* of , and *I.K.* of , the trustees of the said society [*or* branch], in the sum of to be paid to the said *E.F.*, *G.H.*, and *I.K.*, as such trustees or their successors, trustees for the time being, or their certain attorney; for which payment well and truly to be made we jointly and severally bind ourselves, and each of us by himself our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord [38 & 39 c.60.sch

Whereas the above-bounden *A.B.* has been duly appointed to the office of of the Society [*or* of the branch of the Society] having its registered office situate as aforesaid, and he, together with the above bounden *C.D.* as his surety, have entered into the above written bond, subject to the condition hereinafter contained: Now therefore the condition of the above-written bond is such, that if the said *A.B.* do render a just and true account of all moneys received and paid by him on account of the said society [*or* branch], at such times as the rules thereof appoint, and do pay over all the moneys remaining in his hands, and assign and transfer or deliver all property (including books and papers) belonging to the said society [*or* branch] in his hands or custody to such person or persons as the said society [*or* branch], or the trustees or committee of management thereof, shall appoint, according to the rules of the said society [*or* branch], together with the proper and legal receipts or vouchers for such payments, then the above-written bond shall be void, otherwise shall remain in full force.

Sealed and delivered in the presence of [*two witnesses.*]

(2.)—In Scotland.

I, *A.B.* of , hereby bind and oblige myself, to the extent of £ at most, as caution and surety for *C.D.*, a person employed by the Society [*or* the branch of the Society], that he, the said *C.D.*, shall on demand faithfully and truly account for all moneys received and paid to him for behoof of the said society [*or* branch], and also assign and transfer or deliver all property (including books and papers) belonging to the said society [*or* branch] in his hands or custody, and that to such person or persons as the said society [*or* branch], or the trustees thereof shall appoint, according to the rules of the said society [*or* branch].

Dated at this day of

Signature of Cautioner.

E.F. of witness.
G.H. of witness.

The above bond shall not require a testing clause or subscription clause, and may be wholly printed, or partly written and partly printed.

FORM OF RECEIPT TO BE ENDORSED ON MORTGAGE OR FURTHER CHARGE.

In England or Ireland.

The trustees of the Society [*or* the branch of the Society] hereby acknowledge to have received all moneys intended to be secured by the within [*or* above] written deed.

Signed [*Signatures of Trustees.*]

Trustees.

Countersigned [*Signature of Secretary.*]

Secretary.

THE THIRD SCHEDULE.

Section

Session and Chapter.	Title or Short Title.	Extent of Repeal.
38 & 39 Vict. c. 60.	The Friendly Societies Act, 1875	The whole Act, except so far as it relates to societies to which section thirty applies and to industrial assurance companies.
46 & 47 Vict. c. 47.	The Provident Nominations and Small Intestacies Act, 1883.	So much as relates to registered societies.
50 & 51 Vict. c. 56.	The Friendly Societies Act, 1887	The whole Act, except in section two so much as relates to section thirty of the Friendly Societies Act, 1875, and sub-section two of section eight, sub-section four of section nine, and sections twelve and eighteen.
51 & 52 Vict. c. 15.	The National Debt (Supplemental) Act, 1888.	Section six.
56 & 57 Vict. c. 30.	The Friendly Societies Act, 1893	The whole Act.
58 & 59 Vict. c. 26.	The Friendly Societies Act, 1895	The whole Act, except sections fifteen and nineteen.

THE DIVIDED PARISHES AND POOR LAW AMENDMENT ACT, 1876.

[39 & 40 VIC., CAP. 61.]

SECTION 23.

Trustees may pay cost of pauper's relief out of annuity payable to such pauper.

WHERE any pauper shall be entitled to any annuity or periodical payment, the trustee or other person bound to make payment of the same to the pauper may from time to time pay to the board of guardians of any union or parish, out of the instalments which have become due, the cost incurred in the relief of such pauper accrued since the last instalment, and such payment shall be a legal discharge to such trustee or other person for so much money as shall have been so paid.

Where the guardians incur any expenses in the relief of a pauper lunatic, being a member of a benefit or friendly society, and as such entitled to receive any payment, they may recover from him, as a debt, or from his executors, administrators, or assigns in case of his death, the sum so expended by them as aforesaid, and the managing body of such society, after notice from the clerk to the guardians, served previously to the money being paid over, shall be required to pay the same to such guardians, and shall be exonerated on payment thereof from any further liability.

Where any trustee, manager, or other person shall decline to make any payment, the guardians may apply to the justices in petty sessions assembled, and such justices may, if satisfied that it is right under all the circumstances to do so, make an order upon him to pay the requisite amounts then due to the guardians at once and to pay from time to time in future as the liability in respect of the relief arises thereafter.

Provided that this clause shall not have effect unless and until the guardians or their relieving officer shall have declared the relief to be given on loan, nor in respect of any relief granted contrary to the rules and orders made under the authority of the statutes in that behalf.

THE POOR LAW AMENDMENT ACT, 1879.

[42 & 43 Vic.]

CHAPTER 12.

An Act to amend the Divided Parishes and Poor Law Amendment Act, 1876.

[23rd May 1879.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

The provisions of s. 23 of 39 & 40 Vict. c. 61, not to apply to moneys to which a pauper or pauper lunatic may be entitled as a member of friendly or benefit society.

1. The provisions contained in the twenty-third section of the Divided Parishes and Poor Law Amendment Act, 1876, shall not apply to any moneys which a pauper or pauper lunatic having a wife or other relative dependent upon him for maintenance may be entitled to receive as a member of any friendly or benefit society, but such moneys shall, subject to any deductions for keeping up his membership required by the rules of such society, or any branch thereof, from which such pauper or pauper lunatic is entitled to receive such moneys, be paid or applied by the trustees, committee, or other officers of such society or branch to or for the maintenance of such wife or relative; and where a pauper or pauper lunatic having no wife or relative so dependent upon him is entitled to any such moneys, no claim shall be made under the said Act by the guardians of any union or parish upon any such society of which he is a member, or against any branch thereof, for the expenses incurred in his relief, unless and until the guardians or their relieving officer shall have declared the relief to be given on loan, and shall have, within thirty days thereof, notified the same in writing to the secretary or trustees of the society or branch of which the pauper or pauper lunatic is a member, and as such entitled to receive any payment.

Short title.

2. This Act may be cited as the Poor Law Amendment Act, 1879.

PROVIDENT NOMINATIONS AND SMALL INTESTACIES ACT, 1883.

[46 & 47 VICT., CH. 47.]

CHAPTER 47.

83. An Act to extend the power of Nomination in Friendly and Industrial, &c., Societies, and to make further provision for cases of Intestacy in respect of Personal Property of small amount. [25th August, 1883.]

WHEREAS under the enactments named in the third section of this Act a member of a friendly, industrial, or other like society to which the said enactments apply may, by writing under his hands delivered at or sent to the registered office of such society, nominate any person to whom any moneys payable by the society on the death of such member, not exceeding fifty pounds shall be paid at his decease, and may from time to time revoke or vary such nomination by a writing under his hand similarly delivered or sent, and on receiving satisfactory proof of the death of a nominator such society is bound to pay to the nominee the amount due to such deceased member not exceeding the sum aforesaid.

And whereas it is desirable to extend the operation of the said enactments:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by the authority of the same, as follows:

and le of 1. This Act extends to Great Britain and Ireland, and except section ten of the same, and so much thereof as relates to trade unions, to the Channel Islands, and except the said section ten, and so much as relates to industrial and provident societies and to trade unions, to the Isle of Man, and may be cited as the Provident Nominations and Small Intestacies Act, 1883.

on 2. In this Act the expressions following have the following meanings:—

"Directors" means (1) in the case of a society or branch whose property is vested in trustees, the trustees for the time being; (2) in the case of a Post Office Savings Bank and of a Post Office Savings Bank Insurance, the Postmaster-General; (3) in any other case, the directing authority by whatever name it may be called:

"Probate" and "letters of administration" for Scotland mean confirmation:

"Savings Bank" means a bank to which the Trustee Savings Bank Act, 1863, applies, and a Post Office Savings Bank:

"Society" includes a registered trade union:

"Office" means in the case of a society registered under the Friendly Societies Acts, the Industrial and Provident Societies Acts, or the Trade Union Acts, the registered office of such society:

In the case of a registered branch under the Friendly Societies Acts, the registered place of such branch:

In the case of a Trustee Savings Bank or of a Trustee Savings Bank Insurance, the office or head office of such bank:

In the case of a Post Office Savings Bank and of a Post Office Savings Bank Insurance, the General Post Office.

3. The following enactments, namely, sub-sections three and four of section fifteen of the Friendly Societies Act, 1875, sub-sections five and six of section eleven of the Industrial and Provident Societies Act, 1876, section ten of the Trade Union Act Amendment Act, 1876, sections forty-one, forty-two, forty-three of the Trustee Savings Bank Act, 1863, section ten of an Act passed in the seventh and eighth years of the reign of her present Majesty, intituled "An Act to amend the law relating to savings banks, and "to the purchase of Government annuities through the medium of savings "banks," and sub-head (e) of section six of the Government Annuities Act, 1882, respectively shall be read as if in the said sections of the said Acts the words one hundred pounds were substituted for the words fifty pounds. 38 & c. 6 (4), 39 & c. 4 (6), 39 & c. 2 26 & c. 8 43, 7 & c. 8 45 & c. 5 ten not

4. A nomination may be partly printed, and if made in a book kept at the office shall be taken to be delivered at such office. Ho na be

5. A depositor in a Savings Bank, not being under sixteen years of age, may by writing under his hand delivered at or sent to the office nominate any person, not being an officer or servant of the directors (unless such officer or servant be the husband, wife, father, mother, child, grandchild, brother, sister, nephew, or niece of the nominator), to whom any sum, not exceeding one hundred pounds, which may remain due to such depositor at his decease may be paid at such decease, and may from time to time revoke or vary such nomination by writing under his hand similarly delivered or sent; and on receiving satisfactory proof of the death of a nominator, the directors shall pay to the nominee the sum due to the deceased depositor, provided it does not exceed one hundred pounds. No tio Sa Ba de

6. In sub-section three of section fifteen of the Friendly Societies Act, 1875, and in any nomination under the said Act which takes effect after this Act has come into operation, the words "moneys payable by the society on the death of such member" shall include deposits made by such member under section eighteen of the said Act, and moneys accumulated for the use of such member under section nineteen of the same Act, with the interest on such deposit or moneys respectively. In sub-sections five and six of section eleven of the Industrial and Provident Societies Act, 1876, and in any nomination under the said Act which takes effect after this Act has come into operation, the words "shares" and "interest" respectively shall be taken to include loans and deposits made under sub-section (2 c) of section ten of the said Act. Ex 38 c. 6 (3), 39 c. 4 (5),

7. If any member of a registered trade union, entitled from the funds thereof to a sum not exceeding one hundred pounds, dies intestate and without having made any nomination which remains unrevoked at his death, Pr in int an no

such sum shall be payable, without letters of administration, to the person who appears to a majority of the directors, upon such evidence as they may deem satisfactory, to be entitled by law to receive the same.

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8. If a member of any society who is entitled to make a nomination under this Act or the Acts hereby amended is illegitimate, and has died intestate, and without having made any such nomination subsisting at his death, the directors may pay the sum which such member might have nominated to or among the person or persons who, in the opinion of the majority of them, would have been entitled thereto if such member had been legitimate, or, if there are no such persons, then the deposits shall be dealt with as the Commissioners of the Treasury may direct.

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9. All payments made by directors under the powers aforesaid shall be valid with respect to any demand of any other person as next of kin of a deceased member, or as his lawful representative or person claiming to be such representative, against the society or savings bank, or the directors, but such next of kin, representative, or claimant shall have remedy for recovery of such money, so paid as aforesaid, against the person or persons who shall have received the same.

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10. For the prevention of frauds on the revenue it is enacted as follows:

(1.) If the total sum with respect to which a nomination may be made under this Act by any person, or standing to the credit of any person in any society or savings bank at his death exceeds, after deduction of any moneys payable under the registered or certified rules of such society or savings bank or otherwise for the purpose of defraying the funeral expenses of such member the sum of eighty pounds sterling, the directors shall before making any payment to a nominee or otherwise under this Act require production of a duly stamped receipt for the succession or legacy duty payable thereon, or a letter, or a certificate from the Commissioners of Inland Revenue stating that none such is payable; such receipt or certificate shall be given by the said Commissioners upon payment of duty, or satisfactory proof of no duty being payable, as the case may be.

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(2.) If, elsewhere than in Scotland, the total personal property, or in Scotland the whole movable estate, of any person entitled to make a nomination under this Act or the Acts hereby amended, or of any depositor in a savings bank, exceeds one hundred pounds sterling, any sum paid under this Act without probate or letters of administration shall, notwithstanding such nomination or payment, be liable to probate duty as part of the amount on which such duty is charged, and the directors shall be at liberty before making any such payment to require a statutory declaration by the claimant, or by one of the claimants, that the total personal estate of the deceased, including the sum in question, does not, after deduction of debts and funeral expenses exceed the value of one hundred pounds.

l and Man.

11. As respects the Channel Islands and the Isle of Man respectively, the following provision shall have effect. When any sum of money becomes payable on the death of a person entitled to make a nomination under this Act or the Acts hereby amended, such sum shall, in default of any direction or nomination such as is contemplated by the Friendly Societies Act, 1875, or by this Act, be paid to the deceased member's legal representative, according to the law of the island in which such deceased member was domiciled.

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(PRACTICAL POINTS).

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* *Cy-près*—The principle of this doctrine is that where a testator has two objects, one primary or general and the other secondary or particular, which are incompatible, the particular must be sacrificed in order that effect may be given to the general object *as near as may be* to the testator's intention according to law.—*Wharton's Law Lexicon.*

* *Bona Vacantia*—Stray Goods—Those things in which nobody claims a property and which belong to the Crown by virtue of its prerogative.—*Wharton's Law Lexicon.*

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